



California Regulatory Notice Register

REGISTER 2005, NO. 18-Z

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MAY 6, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. CALIFORNIA STATE LIBRARY

NOTICE OF INTENTION TO AMEND A CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the California State Library intends to ask the Fair Political Practices Commission to amend the Library's Conflict of Interest Code pursuant to Government Code Section 87302. Pursuant to Government Code Sections 87300–87302 and 87306, the code designates employees who must disclose certain investments, income, interest in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. This proposed amendment will incorporate new designated positions added to the Library since the last revision, change classifications or position designations which have been modified since the last revision, and delete positions which are no longer relevant to the Library's Conflict of Interest Code. Included in the proposed changes is the creation of one new organizational reporting unit in the State Library, the California Cultural and Historical Endowment, and several designated positions within that reporting unit.

This amendment will include in the Conflict of Interests Code board members and staff of the Library's new Cultural and Historical Endowment program, a \$128 million funding program established pursuant to "The California Cultural and Historical Endowment Act." (California Education Code, Part 11, Chapter 13, Section 20050, et seq.)

Pursuant to Title 2, California Code of Regulations, Section 18750, a written comment period has been established commencing on May 20, 2005 and terminating on July 5, 2005. Any interested person may present written comments concerning the proposed code amendments no later than July 5, 2005 to the California State Library, Attn. Victor Pong, 1029 J Street, Suite 400, Sacramento, California 95814. Any interested person or his or her representative may present oral comments related to this amendment of the State Library's Conflict of Interest code at a public hearing to be held July 5, 2005, at

9:00 a.m. in Room 213 of the Library and Courts I Building, 914 Capitol Mall, Sacramento.

The California State Library has prepared a written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information upon which its proposal is based.

Copies of the proposed amendment to the Conflict of Interests Code, and all of the information upon which it is based, may be obtained from the California State Library, FPPC Comments, 1029 J Street, Suite 400, Sacramento, CA 95814. Any inquiries concerning the proposed code amendments should be directed to Victor Pong at (916) 445-9595.

The California State Library has determined that no alternative considered by the agency would be more effective in carrying out the proposed changes for which the actions are presented or would be as effective and less burdensome to affected private persons than the proposed action.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The California State Library has determined that this proposal imposes no mandate on local agencies or school districts.

Cost or savings to any state agency: none

Cost to any local agency or school district in which reimbursement is required under Part 7 (commencing with Section 17500) of division 4 of the Government Code: none

Other non-discretionary cost or savings imposed on local agencies: none

EFFECT OF HOUSING COSTS AND SMALL BUSINESS

The adoption, amendment or repeal of the proposed regulation will have no significant effect on housing costs or on private persons, business, or small businesses.

TITLE 2. DEPARTMENT OF FINANCE

NOTICE IS HEREBY GIVEN that the Department of Finance, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Department of Finance proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment includes the addition of two new positions, Assistant Program Budget Managers in the Education Systems and Corrections/Criminal Justice/State and Consumer Services/General Government units; the deletion of two positions, Assistant Program Budget Manager, Administration and Supervising Administrative Analyst (Accounting Systems), Fiscal Systems and Consulting; and the elimination of the Washington, D.C. unit with the Director and Deputy Director positions. Additionally, there are other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than June 20, 2005, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or person's representative requests a public hearing, he or she must do so no later than June 5, 2005, by contacting the Contact Person set forth below.

The Department of Finance has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Department of Finance has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the Department of Finance must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Louise Fong
915 L Street, 6th Floor
(916) 445-3368
louise.fong@dof.ca.gov

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY:

Employment Training Panel

A written comment period has been established commencing on **May 6, 2005**, and closing on **June 20, 2005**. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 20, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Kevin S. Moen**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Kevin S. Moen**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and

87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

MULTI-COUNTY:

Juvenile Ward Joint Powers Authority
CRHMFA Homebuyers Fund (CHF)
Rural Health Joint Powers Authority
Rural Counties' Environmental Services
Joint Powers Authority
California Local Government Finance Authority

A written comment period has been established commencing on May 6, 2005, and closing on June 20, 2005. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

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Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than June 20, 2005. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

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Any inquiries concerning the proposed conflict of interest code(s) should be made to Kevin S. Moen, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

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Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Kevin S. Moen, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after **June 9, 2005**, at approximately **9:30 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 7, 2005**.

BACKGROUND/OVERVIEW

Section 85307, which was enacted by Proposition 34 of the Political Reform Act (“Act”)¹, states:

“(a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender’s regular course of business on terms available to members of the general public for which the candidate is personally liable.

(b) Notwithstanding subdivision (a), a candidate for elective state office may not personally loan to his or her campaign, including the proceeds of a loan obtained by the candidate from a commercial lending institution, an amount, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.”

With this addition of section 85307(a) to the Act, extensions of credit which are reportable contributions are subject to the contribution limits of Proposition 34. Therefore, it becomes critical to determine if a particular payment is considered a contribution since both candidates and providers of goods or services (i.e., vendors) may be subject to potential contribution limit violations.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. § 18530.7: The Commission may consider whether regulation 18530.7 should be adopted to provide guidance with regard to the contribution limits imposed by section 85307(a) upon extensions of credit, where those extensions of credit consist of the provision of goods or services.

In considering this issue, the Commission may address when extensions of credit are subject to section 85307(a) and may distinguish those situations where a vendor is carrying on business as usual with no intention of making a political contribution.

Proposed language includes:

- A rule describing when extensions of credit that consist of the provision of goods or services are contributions subject to section 85307(a);
- Rules describing when such extensions of credit are *not* contributions subject to the contribution limits of section 85307(a), including a time-based standard (i.e., “bright line rule”) and an “ordinary course of business” standard based on specified criteria;
- Optional language for determining when payment must be made in order to meet the time-based standard;

¹ All references are to the Government Code unless otherwise noted.

- Optional language addressing the required elements of a written instrument recording the credit arrangement under the “ordinary course of business” standard;
- Optional language pertaining to the “ordinary course of business” standard and the circumstances under which a provider of goods or services may demonstrate that the provider made “reasonable efforts” to collect the full amount of the payment for the goods or services provided;
- Optional language describing the legal effect of meeting criteria for either the time-based or “ordinary course of business” rule.

The proposed regulatory language which may be examined by the Commission is limited to the interpretation of section 85307 and is not intended to impact the Act’s reporting requirements.

SCOPE

The Commission may delete provisions, adopt the language noticed herein, or choose new language to implement its decisions concerning extensions of credit and the Commission’s campaign rules, their scope or other related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code section 85307.

CONTACT

Any inquiries should be made to Natalie Bocanegra, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal this regulation if it remains substantially the same as described or as in the text originally made available to the public. The Commission may make changes to this regulation before its adoption or repeal.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after June 9, 2005, at 9:45 a.m. Written comments must be received at the Commission offices no later than 5:00 p.m. on June 7, 2005.

BACKGROUND/OVERVIEW

On March 21, 2001, the California Public Employees’ Retirement System Board adopted certain amendments to 2 Cal. Code Regs. § 554.6, which, among other things, instituted runoff elections in the event that no single candidate received a majority of votes (i.e., 50% of votes cast plus one vote). Under the current regulation governing reporting of contributions and expenditures related to elections for the California Public Employees’ Retirement System Board, there is no provision for reporting contributions or expenditures in a runoff election. Therefore, the Commission considered proposed amendments for pre-notice discussion at the June 2002 meeting. However, on June 14, 2002, the Sacramento Superior Court ruled, among other things, that the CalPERS regulation establishing the runoff elections was invalid. The CalPERS Board then amended the regulation in compliance with the court order on July 11, 2002. As a result, the Commission is now considering adoption of an amendment to that regulation that would implement the filing of an additional campaign statement in elections in which a runoff is held. Other non-substantive, conforming changes are also proposed.

REGULATORY ACTION

Amend 2 Cal. Code Regs. § 18452: The proposed amendment institutes a third campaign statement during elections for the California Public Employees’ Retirement System Board in which a runoff election is held. Other non-substantive, conforming amendments are proposed.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. These regulations will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. These regulations will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. These regulations will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code section 84225.

CONTACT

Any inquiries should be made to Galena West, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-800-ASK-FPPC. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulations if they remain substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulations before their adoption or repeal.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by section 83112 of the Government Code and 2 Cal. Code of Regs. section 18312, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. A public hearing on the proposed regulation will be held on or after **June 9, 2005**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California 95814, commencing at approximately **9:30 a.m.** Written comments to be submitted to the Commission prior to the hearing must be received no later than **5:00 p.m. on June 7, 2005**, at the Commission offices.

BACKGROUND/OVERVIEW

Contributions with insufficient donor information must be returned to the contributor, pursuant to section 85700 of the Political Reform Act ("Act").¹ The Commission will consider amendments to regulation 18570 clarifying a committee's obligations when the returned contributions are not cashed by the original contributor and the contribution remains in the committee's bank account.

The amendments to be considered provide that returned contributions which are not cashed by the original contributor within 90 calendar days from the date they are returned by the candidate or committee be turned over to the state General Fund or to a local general fund.

In addition, the Commission will consider whether to provide that contributions subject to regulation 18570 "shall" be paid to the general fund of the local jurisdiction if the contribution was made in connection with a local election in the circumstances described above. Currently, regulation 18570 provides that contributions that cannot be returned to the contributor shall be returned to the General Fund of the State. If the contribution was made in connection with a local election, the contribution "may" be paid to the local fund of the local jurisdiction.

Declaring that such contributions "shall" go to the local jurisdiction if made in connection with a local race would eliminate any ambiguity regarding whether the committee has the option to select either the state General Fund or the local general fund.

DISCUSSION OF PROPOSED REGULATORY ACTION

Regulation 18570: Staff proposes two amendments to this regulation.

Amend regulation 18570, subdivision(c): Regulation 18570, subdivision(c), may be amended to provide that if a contribution subject to regulation 18570 cannot be returned, the contribution "shall" be turned over to the General Fund of the local jurisdiction, if the contribution was made in connection with a local election.

Add subdivision (f) to regulation 18570: Regulation 18570, subdivision (f), is added to state that contributions which are returned by check, but are not cashed by the original contributor within 90 calendar days, are to be turned over to the General Fund of the state. The Commission will consider whether such contributions, if made in connection with a local campaign, "shall" or "may" be turned over to the General Fund of the local jurisdiction.

¹ Government Code sections 81000–91014.

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Effect on State Government. This regulation will have no fiscal impact on any state agency or program.

Fiscal Effect on Federal Funding of State Programs. This regulation will have no fiscal impact on any federally funded state program or agency.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code section 85700.

CONTACT

Any inquiries concerning the proposals should be made to Theis Finlev, Fair Political Practices Commission, 428 J Street, Eighth Floor, Sacramento, California 95814, telephone (916) 322-5660. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Fair Political Practices Commission may adopt the proposed regulation if it remains substantially the same as described or as in the text originally made available to the public. The Fair Political Practices Commission may make changes to the proposed regulation before its adoption.

TITLE 4. CALIFORNIA HORSE RACING BOARD

DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1663 ENTRY OF CLAIMED HORSE

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1663, Entry of Claimed Horse, to provide that a horse claimed in a California claiming race is ineligible to race in any State other than California until 60 days after the close of the meeting from where it was claimed except in a stakes race.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, June 30, 2005**, or as soon after that as business before the Board will permit, at the **Alameda County Fair Grounds, 4501 Pleasanton Avenue, Pleasanton, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on June 20, 2005**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6042
E-mail: HaroldA@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions (B&P) Code. Reference: Section 19562, B&P Code.

B&P Code Sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19562, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

B&P Code Section 19420 provides that jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. B&P Code Section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to: Licensing of each racing association and all persons, other than the public at large, who participate in a horse racing meeting with pari-mutuel wagering. B&P Code Section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State.

The California horse racing industry has asked the Board to amend Rule 1663 to prevent horses claimed in California claiming races from being raced out of state until 60 days after the close of the meeting at which they were claimed. The number of horses claimed in California has steadily increased over time. Between fiscal year 1996–1997 and fiscal year 2003–2004, the number of California horses claimed rose from 2,440 to 3,397. The industry maintains many of these horses are shipped out of state, with the effect of lowering the in-state stock of horses. The depletion of eligible race horses in California means fewer starters, which causes California’s horse racing product to be less attractive to the wagering public. Between 1997 and 2003, on-track attendance at horse racing events in California dropped by over 1.6 million fans. This phenomenon is attributed, in part, to short fields. The proposal to make horses claimed in California ineligible to race in another jurisdiction until 60 days after the meeting in which it was claimed is not unique. Many horse racing jurisdictions have such regulations, and all United States horse racing jurisdictions honor them on a reciprocal basis. If a horse claimed in another jurisdiction is shipped to California and there are questions regarding its eligibility to race, the jurisdiction from which it was claimed is contacted to make a determination. The harness industry was previously exempt from the provisions of Rule 1663. However, harness meetings are also experiencing a shortage of horses, so the industry requested that a standardbred claimed in California be prohibited from running in another state until 60 days after the meeting in which it was claimed.

New language in subsection 1663(b) provides that horses claimed out of a claiming race in California are ineligible to race in any State other than California until 60 days after the close of the meeting at which it was claimed except in a stakes race. The 60-day “jail-time” for claimed horses does not preclude an owner from racing his horse in California, nor does the language stop an owner from racing in stakes races. Instead, it is designed to slow the practice of “raiding” wherein an out-of-state owner or trainer will claim multiple horses at a meeting and immediately take them out of state. Subsection 1663(b)(1) states that for the purposes of the rule, the California Fair Circuit is considered one meeting. The industry requested this provision, as California’s Fair Circuit is composed of multiple meetings of short duration (between 10 and 17 day of racing), and is particularly vulnerable to the claiming practices of out-of-state owners and trainers. Considering the Fair Circuit one meeting will bring the time constraints on claimed horses more in line with California’s major meetings, which last anywhere from several months to a year in duration.

Subsection 1663(d) would include standardbred horses in the 60-day prohibition while maintaining the breed’s exemption from the remaining provisions of the Rule. Standardbred horses were previously excluded from the provisions of Rule 1663, but the industry requested it be included in the 60-day “jail-time” provision as it, too, has felt the effect of claimed horses being taken out-of-state.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1663 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1663 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1663 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1663 states the conditions under which a horse claimed out of a claiming race may start in a subsequent race, and may be run back in a claiming race or run out-of-state. The regulation also provides the conditions under which a claimed horse may be removed from the grounds of the racing association where it was claimed.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that

has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: HaroldA@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Pat Noble, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations

should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

TITLE 5. EDUCATION AUDIT APPEALS PANEL

NOTICE OF PROPOSED RULEMAKING

Audits of K-12 Local Education Agencies Fiscal Year 2005-06

The Education Audit Appeals Panel (EAAP) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

EAAP will hold a public hearing starting at 1:30 p.m. on June 20, 2005, in the Cedar Room at 915 L Street, Sacramento, CA 95814. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. EAAP requests that any person desiring to present statements or arguments orally notify EAAP's Regulations Coordinator of such intent. EAAP requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period closes at **5:00 p.m. on June 20, 2005**. EAAP will consider only

written comments received by the Regulations Coordinator by that time (in addition to those comments received at the public hearing). Written comments for EAAP's consideration should be directed to:

Chris Pentoney, Regulations Coordinator
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814
Fax: (916) 445-7626
e-mail: cpentoney@eaap.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Section 14502.1, Education Code.
Reference: sections 14501, 14502.1, 14503, 41020, and 47634.2, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

EAAP proposes to amend sections 19813, 19814 and 19814.1, and adopt sections 19850 through 19854 in Title 5 of the California Code of Regulations, Division 1.5, Chapter 3. The purpose of these regulations is to provide definitions of terms and specification of procedures to guide accountants in the conduct of statutorily required financial and compliance audits of local education agencies for the 2005–06 fiscal year. The Controller proposed inclusion in the audit guide of procedures to address the audit requirements applicable to charter schools specified in subdivision (d) of Education Code Section 47634.2.

Article 2, Audit Reports, includes specification of the components of the audit reports in Section 19813 and definitions of terms in Section 19814. Section 19813(e)(1) and Section 19814(d) are being amended because the State Controller has notified EAAP of a change in title and content of the report specified in those subdivisions. Subdivision (e) of Section 19814 is being amended to delete one program and to add the specification of the numbers of new procedures for inclusion in the audit guide for the 2005–06 fiscal year. Section 19814.1, Applicability of Audit Procedures by Audit Year, is being amended to specify the applicability of procedures for fiscal year 2005–06 audits.

Article 4, Charter Schools, is being added to address audit requirements that are unique to charter schools. Education Code Section 47634.2(d) provides, "Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020." The proposed new sections set forth audit procedures that guide auditors in steps to determine whether an auditee was in compliance with the relevant statutory and regulatory requirements during the period audited.

These sections further direct auditors to prepare schedules and include statements in the Findings and Recommendations section of the audit report displaying any instances of noncompliance, and specifying or estimating the dollar value of the noncompliance where appropriate. The areas proposed for inclusion in the audit guide are

- § 19850. Contemporaneous Records of Attendance;
- § 19851. Nonclassroom-Based Instruction/Independent Study;
- § 19852. Additional Nonclassroom-Based Instruction;
- § 19853. Determination of Funding for Nonclassroom-Based Instruction; and
- § 19854. Annual Instructional Minutes—Classroom Based.

DISCLOSURES REGARDING THE PROPOSED ACTION

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None
- Other non-discretionary cost or savings imposed upon local educational agencies: None
- Cost or savings in federal funding to the state: None
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impact on a representative private person or business: EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not:
 - (1) create or eliminate jobs within California;
 - (2) create new businesses or eliminate existing businesses within California; or
 - (3) affect the expansion of businesses currently doing business within California.
- Significant affect on housing costs: EAAP has made an initial determination that the proposed regulatory action would not affect housing costs.
- Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), EAAP must determine that no reasonable alternative considered by EAAP or that has otherwise been identified and brought to the attention of EAAP would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

EAAP invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action, may be directed to Chris Pentoney, Regulations Coordinator, at (916) 445-7745 or by e-mail: cpentoney@eaap.ca.gov. The back-up contact person for general inquiries is Carolyn Pirillo at (916) 445-7745.

**AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATIONS**

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address stated above. The Regulations Coordinator will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon completion of the Final Statement of Reasons, a copy may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, and Final Statement of Reasons will be accessible, through the Education Audit Appeals Panel website: www.eaap.ca.gov

**TITLE 10. DEPARTMENT
OF INSURANCE****NOTICE OF PROPOSED ACTION**

DATE: April 26, 2005
REGULATION FILE: RH05044548

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to amend Title 10, Chapter 5, Subchapter 9 of the California Code of Regulations, Article 8, Section 2698.95 and to add Sections 2698.95.1, 2696.96, 2696.97, 2696.98 and 2698.98.1. The regulation will clarify the treatment of persons insured by a group disability insurance policy and will establish an application procedure and other measures designed to insure accountability by recipients of grants under the Disability Insurance Fraud Assessment program.

PUBLIC HEARING

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held at 1:30 p.m. on June 27, 2005 at the Department of Insurance Hearing Room, 22nd Floor, 45 Fremont Street, San Francisco, CA 94105. The sole purpose of such a hearing would be to address the merits of the proposed regulations.

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code section 1872.85. Insurance Code section 1872.85 provides the authority for this rulemaking.

**PRESENTATION OF WRITTEN COMMENTS;
CONTACT PERSONS**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at

4:00 p.m. on June 27, 2005. Please direct all written comments to the following contact person:

Gene Woo, Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4496

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

John Standish, Bureau Chief
California Department of Insurance
Fraud Division, Southern Region
1495 Pacific Highway, Suite 400
San Diego, CA 92101
Telephone: (619) 645-2550

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 4:00 p.m. on June 27, 2005. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: woog@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Gene Woo and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Existing law permits the Commissioner to collect an annual fee from each admitted disability insurer or other entity liable for any loss due to health insurance fraud doing business in the state. The annual fee, which may not exceed ten cents annually for each insured under an individual or group insurance policy issued in the state, is to be used to fund increased investigation and prosecution of fraudulent health insurance claims. The proposed regulations will implement Section 1872.85 of the Insurance Code, which was enacted in 1991, and will clarify the treatment of persons covered by group disability

insurance policies. In addition, the proposed regulations will create a detailed application process for recipients to obtain grants from the Disability Insurance Fraud Assessment program and will institute certain accountability responsibilities for recipients.

EFFECT OF PROPOSED ACTION

The proposed regulation specifies that the definition of an insured person includes anyone issued an individual certificate of coverage. The proposed regulation sets out criteria for the Commissioner to consider in awarding grants under the program, details what is to be contained in a grant application, describes funding procedures and sets out requirements for annual reports on the results of the grants obtained from the program.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are disability insurers. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance or reporting requirements for businesses.

3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

It is not anticipated that California businesses will be required to engage in any reporting, recordkeeping or other compliance activities as a result of these proposed regulations. The proposed regulations may require District Attorneys to file applications, financial reports and performance reports. However, the proposed regulations would only require these activities if a District Attorney elected to apply for a grant funded by the Disability Insurance Fraud Assessment.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY

The Commissioner finds that is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on the issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will not affect small businesses.

Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), insurers are not small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right side of the page, find the major heading "Quick Links". In this section, scroll down until you see the subheading "Legal Information". Click on the link. On the next page at the top of the page, there will be a link entitled "Proposed Regulations". Click on the link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conduct a search or browsing for them by name.

To search, enter "RH05044548" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "1872.85") or search by keyword (for

example “disability insurance assessment”). Then, click on the “Submit” button to display links to the various filing documents.

To browse, click on the “Browse All Regulations” button near the bottom of the screen. A list of the names of regulations for which documents are posed will appear. Find in the list the “Disability Insurance Assessment” link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those that have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

CDI File No. RH05044911

Date: April 25, 2005

SUBCHAPTER 4.11 RESIDENTIAL PROPERTY INSURANCE, ACKNOWLEDGMENT REQUIREMENTS, RECORDS MAINTENANCE, RETENTION, REPORT

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner proposes to adopt the regulation described below after considering comments from the public. The Commissioner proposes to add to Title 10, California Code of Regulations, Chapter 5, SUBCHAPTER 4.11 *Residential Property Insurance, Acknowledgment Requirements, Records Maintenance, Retention, Report*. The regulation will implement guidelines relating to the rating and underwriting of policies of residential property insurance, including records retention, reporting requirements and certain acknowledgements to be made to consumers prior to the sale of a policy of residential property in insurance

AUTHORITY AND REFERENCE

The authority for the proposed regulation is the express authority conferred upon the Commissioner under Cal. Ins. Code § 790.10, implementing, interpreting and making specific Cal. Ins. Code §§ 790 *et seq.*, the express authority conferred upon the Commissioner under Cal. Ins. Code § 1857(i) to implement, interpret and make specific Cal. Ins. Code

§§ 1857 *et seq.*, the express authority conferred upon the Commissioner under Cal. Ins. Code § 1857.9(h) to implement, interpret and make specific Cal. Ins. Code §§ 1857.9, the authority conferred upon the Commissioner under Cal. Ins. Code § 1861.05, which provides the commissioner with broad authority relating to the regulation of insurance rates. Reference: Cal. Ins. Code § 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

HEARING DATES AND LOCATIONS

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation on the following dates at the following locations.

Thursday, July 14, 2005—10:30 A.M.

State Building

Milton Marks Auditorium

455 Golden Gate Avenue

(Between Larkin and Polk)

San Francisco CA 94102

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS: CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Donald P. Hilla, Senior Staff Counsel

California Department of Insurance

45 Fremont Street, 21st Floor

San Francisco, CA 94105

Telephone: (415) 538-4108

Questions regarding the hearing, comments or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Lara Sweat, Staff Counsel

California Department of Insurance

45 Fremont Street, 21st Floor

San Francisco, CA 94105

Telephone: (415) 538-4192

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, care of the contact person at the

address listed above, by no later than **5:00 P.M. on July 7, 2005**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept and strongly encourages written comments transmitted by e-mail, provided they are sent to the following e-mail address: hillad@insurance.ca.gov. The Commissioner also requests a hard copy of the comments electronically submitted. Please place the following in the subject heading of the e-mail: **CDI File No. RH05044911**. Microsoft Word documents may be attached to e-mails. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of **Donald Hilla** using the following fax number: **(415) 904-5490**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10 of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law

Cal. Ins. Code § 675 defines residential property risks. The proposed regulation refers to this definition in defining the scope of the proposed regulation.

Cal. Ins. Code § 676 provides the legal requirements for a valid notice of cancellation and non-renewal of a residential property insurance policy. While not specifically referred to in the proposed regulation insurers may refer to this section in making “negative rating or underwriting decisions” as that term is defined in the proposed regulation.

Cal. Ins. Code § 679.71 provides an insurer may not refuse to issue a policy of residential property insurance under conditions less favorable to the potential insured than to other comparable potential insureds. “Conditions less favorable” may include the imposition of higher rates, the rejection of an application, and cancellation and / or nonrenewal of a policy of insurance. The proposed regulation may be relevant to the Commissioner in determining whether the rates, rating plans, rating systems and or underwriting rules applied by an insurer have a unfairly discriminatory impact on specific persons or groups of persons in noncompliance with Cal. Ins. Code § 679.71.

Cal. Ins. Code §§ 790 *et seq.* provides for regulation of various marketing and other practices used in the business of insurance. The stated purpose of Cal. Ins. Code §§ 790 *et seq.*, entitle *Unfair Practices*, is “to regulate trade practices in the business of insurance . . . by defining, or providing for the determination of all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.”

Cal. Ins. Code § 790.10 provides that the commissioner shall promulgate reasonable rules and regulations to administer Cal. Ins. Code § 790 *et seq.*, that is, to define prohibited, unfair and deceptive acts or practices. This section provides the Commissioner with the authority to adopt regulations to interpret and make specific Cal. Ins. Code § 790 *et seq.* The Commissioner believes that failure to inform insureds and potential insureds of the negative ramifications associated with making a claim is an unfair and deceptive act or practice. This regulation requires insurers to make certain information available to insured and potential insureds.

Cal. Ins. Code § 1857(a) requires an insurer to maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience, of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems and underwriting rules. The proposed regulation makes the records requirements in Cal. Ins. Code § 1857(a) more specific by detailing exactly the kind of records that must be kept in relation to compliance with the various insurance laws regarding rates, rating plans, rating systems and underwriting rules.

Cal. Ins. Code § 1857(i) provides specific authority for the Commissioner to promulgate regulations relating to record keeping.

Cal. Ins. Code § 1857.9 provides that the Commissioner may require property and casualty insurers to issue reports.

Cal. Ins. Code § 1857.9(h) provides the Commissioner with specific, express, statutory authority to issue rules that identify, define and make specific what information is to be contained in the reports made pursuant to Cal. Ins. Code § 1857.9 and to require insurers to issue reports per his instructions as to form, data and information that is required to be reported.

Cal. Ins. Code § 1861.03(a) provides that the business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51 to 53, inclusive, of the Civil Code), and the antitrust and unfair business practices laws (Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) of Division 7 of the Business and Professions Code). The informational reporting required by the proposed regulation might be relevant to enforcement actions taken pursuant to Cal. Ins. Code § 1861.03. The Commissioner has an affirmative duty to enforce this statute. The proposed regulation allows him to gather the information necessary to carry out his duties as required under Cal. Ins. Code § 1861.03.

Cal. Ins. Code § 1861.05(a) provides that, “No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter.” In rating and underwriting a policy of insurance, where underwriting impacts the rate, insurers must use data that is true and correct. Rates based on incorrect or faulty data are arbitrary. Rates resulting from calculations made using faulty data are excessive, inadequate or unfairly discriminatory. Cal. Ins. Code § 1861.05 provides the Commission with broad authority to issue rules of general application in order to regulate rates. Requiring insurers to take reasonable steps to verify data is well within this authority.

In *State Farm Mutual Automobile Insurance Company v. Garamendi* (32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343; 2004) the California Supreme Court made clear that the Commissioner’s authority under Proposition 103 is extremely broad. The court noted that the stated purpose of Proposition 103 is “to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.” (Historical and Statutory Notes, 42A West’s Ann. Ins. Code (1993 ed.) foll. § 1861.01, p. 649.)” The

Supreme Court also made it clear that Proposition 103 is “not only about rates and rate regulation; it also concerns other factors that may impermissibly affect the availability of insurance.”

Cal. Ins. Code § 12926 provides that the Commissioner shall require compliance from every insurer with all the provisions of the Cal. Ins. Code.

See also: *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

POLICY STATEMENT OVERVIEW

The Commissioner has determined that serious problems exist in the California residential property insurance market. Over the last three years the residential property insurance market has experienced periods of extreme availability and affordability problems.

Chief among these problems is the nonrenewal of homeowners insurance policies based only upon the policyholder making a claim. This is referred to by Commissioner Garamendi as the “use it and lose it syndrome.” While the practice itself is problematic, almost more troubling is the fact that many policyholders are unaware of the consequences they will encounter should they make a claim against their policy, and they end up losing their insurance due to this lack of information.

As is quoted above the stated purposes of Proposition 103 is to ensure that insurance is fair, available, and affordable for all Californians. The Commissioner has an affirmative duty to monitor the insurance market and to intercede when problems arise. Considerations of fairness and availability come into play when insureds make claims against their policies and suffer retribution for doing so. Considerations of fairness also come into play when policyholders are not fully informed of the consequences they will suffer upon making a claim. The proposed regulations are intended to address this inherent unfairness.

The stated purpose of the Unfair Practices Act is to “regulate trade practices in the business of insurance . . . by defining, or providing for the determination of, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.” The key word here is “unfair.” The Commissioner has determined that it is unfair and deceptive to market insurance

products and collect premium without informing insurance consumers about the most basic and fundamental aspects of the policy, including what will happen to the insured should they make a claim against their policy. That is why the proposed regulation requires insurers to inform policyholders and potential policyholders that if they use it they may very well lose it.

Similarly, the Commissioner believes that various negative rating and underwriting practices being engaged in by insurers may be having an unfairly discriminatory impact on certain groups of people in California. The California Insurance Code is very clear that the Commissioner may designate and order insurers to collect and retain any records related to the business of insurance. In this case the data required to be maintained relates to the impact of procedures like "use it and lose it." The California Insurance Code also makes clear the Commissioner's authority to order reports of data collected and maintained and as such the proposed regulation designates the content of said reports. The Commissioner is charged with seeing to it that insurance is not marketed in California in an unfairly discriminatory manner and that no specific group of California citizens is treated in a manner dissimilar to other groups of citizens. The proposed regulation is necessary to allow the Commissioner to carry out the duties of his office.

Finally, Proposition 103 gives the Commissioner sweeping and broad authority over rates. A rate that is predicated on incorrect information is, by definition, excessive, inadequate, or unfairly discriminatory. That is why the proposed regulation requires insurers to take reasonable steps to verify the accuracy of data used to rate policies.

Over the last three years a significant numbers of Californians have found it difficult, if not impossible, to purchase residential property insurance in the standard market. Many Californians who have had their policies with the same companies for many years have had their residential property insurance cancelled or nonrenewed. These regulations are designed to address some of the problems associated with this troubled insurance market and to provide for a more robust and vigorous insurance marketplace by increasing competition.

Effect of Proposed Action

As outlined in detail above the proposed regulation will implement, interpret and make specific several California Insurance Code sections that relate to residential property rating and underwriting. The proposed regulation will allow the Commissioner to make important determinations relating to the impact of "use it and lose it" underwriting in California. The regulation will allow insurance consumers to be better

informed about the products they are purchasing and similarly allow insurance consumers to make more informed choices as they shop for insurance. Finally, the regulation will facilitate the Commissioner in preventing the application of excessive, inadequate or unfairly discriminatory rates.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

This proposed regulation does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Department has made an initial determination that adoption of the proposed regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The types of businesses that may be affected are insurers and insurance underwriters. There will be additional record-keeping requirements imposed upon certain insurers that have not been previously required. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed regulations are insurers that transact residential property insurance in the State of California.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action. The Commissioner, however, invites public comment on alternatives to the regulation.

Performance standards were considered. The objective identified was fairness in residential property rating. However, one of the reasons performance standards were rejected was the Commissioner does not, at the present time, have the data needed to determine the standards. The regulation will allow further study that may lead to performance standards in the future.

The proposed regulation is one part of an ongoing process designed to address several ongoing problems in the residential property insurance market. Other alternatives include and have included communication with individual insurers and the industry as a whole, other regulations and legislation. The ongoing program is known as "The Homeowners Bill of Rights."

Having focused on the problems outlined in this document for over two years the Commissioner believes the proposed regulation represents the best and most viable alternative at the present time.

Finally, the Commissioner continues to study alternatives.

IMPACT ON SMALL BUSINESS

The matters proposed herein will only affect insurance companies, and therefore will not affect small business. (Gov. Code Section 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulation.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Near the bottom of the page, under "Select a Topic" click on "Consumers". Scroll down to the heading "Regulatory Activity." In this section, scroll down until you see the subheading "Proposed Regulations—Search." Click on the "Proposed Regulations—Search" link. When the "Search"

screen appears, you may choose to find the documents by either conducting a search or by browsing for them by name.

To search, enter the Department's regulation file number for these regulations in the "Search for" field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "1861.05"), or search by key word ("residential" for example). Then, click on the "submit" button to display links to the various filing documents."

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Losses and Loss Exposure" link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

If the regulations adopted by the Department differ from but are sufficiently related to the original text, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF EMISSION STANDARDS AND TEST PROCEDURES FOR NEW 2007 AND LATER OFF-ROAD LARGE SPARK-IGNITION (LSI) ENGINES AND FLEET REQUIREMENTS FOR USERS OF OFF-ROAD LSI ENGINES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider the adoption of new emission standards for 2007 and later off-road large spark-ignition (LSI) engines, requirements for fleet users of such equipment and verification procedures for retrofit control systems.

DATE: June 23, 2005

TIME: 9:00 a.m.

PLACE: San Joaquin Valley Air Pollution
Control District
1990 East Gettysburg Avenue
Fresno, California 93726

or Via Videoconference (2 Locations)
District Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, California 95356

District Southern Region Office
2700 M Street, Suite 275
Bakersfield, California 93301

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 23, 2005, and may continue at 8:30 a.m., June 24, 2005. This item may not be considered until June 24, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before June 23, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments and adoptions to title 13, California Code of Regulations, and the documents incorporated by reference therein: Amend sections 2430, 2433, and 2434. Amend the title of incorporated "California Exhaust Emission Standards and Test Procedures for New 2001 and Later Off-Road Large Spark-Ignition Engines," adopted September 1, 1999; and adopt incorporated "California Exhaust Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines." Adopt sections 2775, 2775.1, 2775.2, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, and 2789.

BACKGROUND

The California Clean Air Act in Health and Safety Code sections 43013 and 43018 grants the ARB authority to regulate off-road mobile source categories. Included are marine vessels, locomotives, utility engines, off-road motorcycles, and off-highway vehicles. Measures within the 2003 State Implementation Plan for Ozone directed ARB staff to develop regulations that continue efforts to reduce emissions from LSI engines above 25 horsepower. In crafting the proposal, the ARB staff developed an outreach program that involved LSI engine and equipment manufacturers, emission control system manufacturers, propane fuel refiners and distributors, end-user facility operators, federal regulatory agencies, environmental/pollution prevention and public health advocates and other interested parties. ARB staff also held five public workshops to solicit input as the proposed regulation was developed.

Over 90 percent of Californians breathe unhealthful air at times. To improve air quality and human health, the United States Environmental Protection Agency (U.S. EPA) and the ARB set ambient air quality standards for harmful air pollutants including ozone. Ozone is formed when hydrocarbons (HC) and oxides of nitrogen (NOx) combine through chemical reactions in the atmosphere in the presence of sunlight.

To reduce HC and NOx emissions from off-road vehicles, the ARB adopted regulations in late 1998 requiring that new LSI engines be certified to a standard of 3.0 grams per brake horsepower per hour (g/bhp-hr) HC+NOx starting in 2001. The regulation phased in the standard such that by 2004, all new engines must meet this requirement. The U.S. EPA later adopted its own LSI regulation incorporating test information obtained from the development of the 1998 ARB LSI regulation. The U.S. EPA regulation required all new LSI engines nationwide to meet the same 3.0 g/bhp-hr standard as of January 2004 and a 2.0 g/bhp-hr standard beginning in 2007.

As a result of these regulations, new LSI engines are now 75 percent cleaner than previously uncontrolled engines and engines meeting the 2007 standard will be approximately 85 percent cleaner. Opportunities exist, however, to further reduce emissions from LSI equipment. First, forklifts accounted for six percent of all off-road emissions in 2000 and this percentage is increasing. Second, there are large numbers of uncontrolled LSI engines still in use that contribute significantly to the overall emissions inventory in California. For example, a forklift with an uncontrolled engine can produce as much emissions in three 8-hour shifts as one new car certified to California's lowest emission level would emit over its entire life. Finally, LSI engines are generally based upon automotive engine technology and there are opportunities to adapt advanced automotive-inspired emission control technologies into new and in-use LSI equipment to cost-effectively reduce emissions.

In recognition of these factors, the 2003 State Implementation Plan included two measures to further reduce emissions from LSI engines. The first measure proposed that the California program harmonize with the U.S. EPA regulations by adopting the 2.0 g/bhp-hr emission standard for 2007 and beyond. The second measure proposed that existing uncontrolled LSI engine emissions be reduced by 80 percent or to a 3.0 g/bhp-hr verification level. The later measure also proposed that zero and near-zero emission standards be developed for new LSI engines. The proposed regulation described below meets the objectives of the two SIP measures.

PROPOSED PROVISIONS APPLICABLE TO ENGINE MANUFACTURERS

The proposal has three components for manufacturers of LSI engines. The first component harmonizes the ARB standard with the more stringent U.S. EPA emission standards and test procedures that become effective in 2007. Under this requirement, manufacturers of 2007 and later model year engines must meet a nominal 2.0 g/bhp-hr HC+NOx and 3.3 g/bhp-hr carbon monoxide (CO) emission levels. The federal requirement allows manufacturers to optionally certify according to the following formula: $(\text{HC}+\text{NOx}) \times (\text{CO})^{0.784} \leq 8.57$. This optional certification standard provides manufacturers the flexibility to let their CO emissions increase so that they may achieve lower HC+NOx levels. The proposed regulation would incorporate these provisions within the first component of the manufacturer lower emission standards.

The second proposed component would require that new 2010 and subsequent model year engines meet a 0.6 g/bhp-hr HC + NOx with a corresponding CO emission standard of 15.4 g/bhp-hr. The 0.6 g/bhp-hr level corresponds to the minimum HC+NOx level on the HC+NOx versus CO emission trade off curve established by the U.S. EPA optional certification formula noted above. As such, the proposed 2010 standard is consistent with the 2007 standard, but limits flexibility to the most stringent HC+NOx emission level to maximize ozone benefits.

The third proposed component establishes optional low emission standards below the 2007 and 2010 mandatory standards. Under this component, engines could be certified to optional tiered new engine standards of 0.1, 0.2, 0.4, 0.6, 1.0 and 1.5 g/bhp-hr HC+NOx through the 2009 model year, and 0.1, 0.2 and 0.4 g/bhp-hr HC+NOx in 2010 and beyond. The low emission standards provide fleet operators additional flexibility in meeting the proposed fleet average emission requirements.

PROPOSED PROVISIONS APPLICABLE TO FLEET OPERATORS

To address emissions from uncontrolled in-use (non-new) engines and encourage zero-emission and lower-emission equipment, the ARB staff is proposing fleet average emission requirements for large and mid-size fleets of equipment powered by LSI engines, including forklifts, industrial tow tractors, sweepers/scrubbers, and airport ground support equipment. Fleet size is determined by aggregating each operators equipment in the State of California. Large LSI fleets are defined as those with more than 25 pieces of equipment while mid-size fleets are defined as those with 4 to 25 pieces of equipment.

Large fleets would have to meet more stringent fleet averages than mid-size fleets because they have greater flexibility when incorporating combinations of

emission-reduction strategies to achieve a prescribed level. Additionally, the fleet average would be more stringent for the forklift portion of the fleet than for the non-forklift portion of the fleet.

The fleet average would be determined using the certification levels of 2001 and newer LSI engines and the retrofit verification levels of engines with retrofit kits. These values are clearly indicated on the engine label. To make the proposal less complex and less intrusive for operators while maintaining cost effective emission benefits, the fleet average would not incorporate load factor, horsepower, or hours of use.

Small fleets, those with 1 to 3 pieces of equipment, would be exempt from the fleet average requirement and instead would be required to control all equipment

by January 1, 2011. The proposal would allow small fleets until 2013 to comply with the requirements if the equipment has an hour of use meter and is used 250 hours per year or less.

The proposal provides LSI fleets with the flexibility to incorporate any combination of retrofits, low-emission purchases, and zero-emission electric purchases to meet the fleet average emission level. Voluntary low emission standards for manufacturers of new LSI engines will allow manufacturers to certify engines at levels significantly lower than current or pending standards. The following table summarizes the proposed fleet average emission levels for forklift and non-forklift LSI fleets.

FLEET AVERAGE EMISSION LEVEL REQUIREMENT (g/bhp-hr)

| LSI Fleet Type | Number of units | By 1/1/2009 | By 1/1/2011 | By 1/1/2013 |
|--------------------------------------|-----------------|---|-------------|-------------|
| Large fleet—forklift component | 26 + | 2.4 | 1.7 | 1.1 |
| Mid-size fleet—forklift component | 4–25 | 2.6 | 2.0 | 1.4 |
| Mid-size or Large Non-forklift fleet | N/A | 3.0 | 2.3 | 1.7 |
| Small fleet | 1–3 | No uncontrolled equipment after 12/31/2010 | | |

ALTERNATIVE COMPLIANCE OPTION FOR AGRICULTURAL-RELATED FLEETS

ARB staff is proposing an alternative compliance option for agricultural-related fleets that would allow additional time to control the highest emitting forklifts as long as steady documented progress is made. The proposal reflects the longer retention periods characteristic of agricultural operations. Under this option, agricultural fleet operators would be required to control (to a 3.0 g/bhp-hr level) ten percent of their uncontrolled forklift fleet each year for ten years through retrofit, repower, or retirement.

VERIFICATION PROCEDURE

ARB staff is also proposing a verification procedure for retrofit control systems to address in-use emissions and to provide fleet operators with additional options to meet the proposed fleet average emission requirements. Such procedures will ensure that the retrofit systems deliver real and quantifiable emission reductions.

The proposed verification procedures would apply to manufacturers of retrofit systems sold in California. These systems include but are not limited to, closed-loop fuel control systems, fuel injections systems, and three-way catalysts.

COMPARABLE FEDERAL REGULATIONS

In 1998 California adopted emission standards for new LSI engines. Following California's lead, in 2002 U.S. EPA did the same (Volume 67, Federal Register, page 68242, November 8, 2002; title 40, Code of

Federal Regulations, part 1048). As the preamble to the federal regulations notes, the federal regulations extend California's standards for new LSI engines to the rest of the United States in 2004 through 2006 and adopt more stringent standards for new LSI engines beginning in 2007.

In the staff's proposal, California would harmonize with the federal standards for new LSI engines in 2007 through 2009 and would adopt yet more stringent California standards for 2010 and later. Optional reduced emission standards for new LSI engines would be established in California for 2007 and later.

To further reduce emissions from LSI engines, the proposal requires California LSI equipment operators to meet fleet average standards. To this end, the proposal allows for retrofitting of in-use (non-new) LSI engines and proposes a verification procedure for retrofit emission controls. The federal regulations do not impose requirements on fleet operators or on in-use engines.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the Proposed Regulatory Action, which includes a summary of the economic and environmental impacts of the proposal. The report entitled: Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Adoption of Emissions Standards for New

2007 and Later Off-Road Large Spark Ignition (LSI) Engines and Fleet Requirements for Users of Off-Road LSI Engines.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on June 23, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to, Mr. Mark Williams by phone at (916) 327-5610 or by email at mwilliam@arb.ca.gov, or to Mr. Tom Evashenk by phone at (916) 445-8811 or by email at tevashen@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice and the ISOR are available on the ARB Internet site for this rulemaking: <http://www.arb.ca.gov/regact/lore2005/lore2005.htm>. All subsequent regulatory documents, including the FSOR, will be available from the same Internet site when completed.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Board's Executive Officer concerning the costs or savings necessarily incurred by the public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (com-

mencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary savings to state or local agencies.

In general, local and state agencies will need to take to comply with the regulatory standards by purchasing new low emission equipment or by retrofitting existing equipment. However, the staff analysis concludes that over the lifecycle of the equipment, a reduction in operating costs through improved fuel use and reduced maintenance can offset the increased initial cost.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR. The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small business.

The Executive Officer has also determined that adoption of the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. An assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

BENEFITS OF THE PROPOSAL

The staff analysis of the proposal indicates that the statewide emissions benefit associated with the new engine standards and operator fleet average emission level requirements will exceed 13 tons per day of HC+NOx in 2010 and 6 tons per day of HC+NOx in

2020. The emission benefit in the South Coast Air Basin (SCAB) will exceed 6 tons per day in 2010, which corresponds to the upper range of the Board's state implementation plan commitment for ozone. The cost-effectiveness of the proposal compares favorably with that of other mobile source regulations promulgated by the ARB.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, June 22, 2005**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: lore2005@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, June 22, 2005**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, June 22, 2005**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each document. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39002, 39003, 39500, 39600, 39601, 39650-39675, 43000, 43011, 43013, 43017, 43018, 43101, 43102, 43104, 43600, and 43700, and 43104. This action is proposed to implement, interpret and make specific Health and Safety Code sections 43000, 43009.5, 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43106, 43107, 43150, 43151, 43152, 43153, 43154, 43204, 43205, 43205.5, 43210, 43210.5, 43211, and 43212.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, Part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (the department) proposes to amend Section 345.06 and adopt Section 345.07 in Article 4.7, Chapter 1, Division 1, Title 13 of the California Code of Regulations, regarding traffic violator school instructor examinations.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action(s) by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m. on June 20, 2005, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to amend Section 345.06 and adopt Section 345.07 under the authority granted by Vehicle Code Sections 1651 and 1665 in order to implement, interpret or make specific Vehicle Code Sections 626.4, 1651, 11200, 11202(a)(2), 11206, 11206.5, 11207, 11208, 11210, 11211, and 11219.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Existing law states no person shall act as a traffic violator school instructor unless licensed by the department. The criteria for eligibility to become an instructor includes being 18 years of age or older, a high school education, a valid California driver license, passing an instructor examination, and other requirements. The proposed regulations will govern the traffic violator school instructor examination, which is a prerequisite for licensure, and authorize administration of the examination by traffic violator schools. Vehicle Code Sections 1651, 11202(a)(2) and 11219 authorize the department to regulate traffic violator school examinations.

The department proposes to amend Section 345.06 and adopt Section 345.07 in order to establish criteria for the administration of the traffic violator school instructor examination and the number of questions on the examination.

FISCAL IMPACT STATEMENT

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: None.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action proposed by the department will change the number of exam questions in the traffic violator school instructor examination and establish criteria for traffic violator schools to administer the examination to applicants.
- The adoption of this regulation will not create or eliminate jobs or businesses in the state of California, nor will it result in the elimination of existing businesses, or reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

- The proposed regulatory action will affect small businesses. The regulatory action will establish the criteria for administration of the traffic violator school instructor examination offered by private entities, some of which are small businesses.

PUBLIC DISCUSSIONS OF
PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Maria Grijalva, Department of Motor Vehicles, Regulations Branch, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-9001, or mgrijalva@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons, Express Terms) may be accessed at www.dmv.ca.gov, Other Services, Legal Affairs Division, Regulatory Actions web page.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050 and 2003 of the Fish and Game Code and to implement, interpret or make specific sections 711, 713, 1050 and 2003 of said Code, proposes to amend Section 230, Title 14, California Code of Regulations, relating to special provisions for black bass tournaments.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1.17, Title 14, California Code of Regulations (CCR), provides that no more than one daily bag limit of each kind of fish, amphibian, reptile, mollusk or crustacean named in these regulations may be taken or possessed by any one person unless otherwise authorized; regardless of whether they are fresh, frozen, or otherwise preserved. Current regulations (Section 5.00, Title 14, CCR) also provide specific bag limits for black bass and no provisions of any regulations exempt any participant in a black bass fishing contest (tournament) from the sport fishing regulations.

However, the Department of Fish and Game as part of Event Permit conditions for fishing contests may authorize an exemption to new regulations which impose an increased minimum size limit larger than 12 inches, a slot size limit, or a reduced bag limit less than five fish. Permit regulations also provide that "insofar as possible; all fish shall be returned to the water alive and in good condition".

The aforementioned exemption does not provide for exceeding the daily bag and possession limit. Local and National angling organizations have requested an exemption to allow for exceeding the daily bag and

possession limits for permitted contests under the provisions and conditions of contest permits. This exemption would allow permitted contests to continue a tradition of maintaining a daily bag limit of fish in a livewell while anglers continue to catch and release fish. These requests are based on the provision that all fish caught in the permitted contest will eventually be released alive, barring any unforeseen mortality.

The Department is proposing to allow anglers, authorized under an Event or Annual Black Bass Contest Permit, to continue to catch and release black bass once they reach their daily bag limit. Under the proposed regulation, once the daily bag and possession limit has been reached, each additional fish caught must immediately be returned to the water alive and in good condition, or be used to replace a fish being maintained alive and in good condition from the participant's livewell or other suitable holding facility. Anglers will not be authorized under this proposed regulation to have more than the daily bag and possession limit in their livewell or other suitable holding facility at anytime during the permitted event.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the City Council Chambers, 301. W. Line Street, Bishop, California on Friday, June 24, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 17, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 22, 2005. Oral and written comments will be accepted at the Commission's June 24, 2005, at the hearing in Bishop, CA. All comments must be received no later than June 24, 2005, at the hearing in Bishop, CA. All written comments must include the true name and mailing address of the commentator.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Ed Pert, Chief, Fisheries Programs Branch, Department of Fish and Game, phone (916) 445-3616, has been designated to respond to questions on the substance of the**

proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States: Given that there is no significant change to the existing contest format, the proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 17. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATION ESTABLISHING A DEFINITION FOR “LARGE CONFINED ANIMAL FACILITY”

The Air Resources Board (the Board or ARB) will conduct a public meeting at the time and place noted below to consider the adoption of a definition for large confined animal facility. This definition was developed to meet the requirements of Senate Bill 700 (SB 700, Florez, Statutes of 2003, Chapter 479).

DATE: June 23, 2005

TIME: 9:00 a.m.

PLACE: San Joaquin Valley
Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, California 93726
or Via Videoconference (2 Locations)
District Northern Region Office
4230 Kiernan Avenue, Suite 130
Modesto, California 95356
District Southern Region Office
2700 M Street, Suite 275
Bakersfield, California 93301

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 23, 2005, and may continue at 8:30 a.m., June 24, 2005. This item may not be considered until June 24, 2005. Please consult the agenda for the meeting, which will be available at least 10 days before June 23, 2005, to determine the day on which this item will be considered.

If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of title 17, California Code of Regulations (CCR), sections 86500 and 86501.

BACKGROUND

State law (SB 700, Florez, Statutes of 2003, Chapter 479) requires ARB to develop a definition of "large" confined animal facilities (large CAFs) by July 1, 2005. In developing this definition, ARB is to review relevant scientific information, including air quality impacts, how confined animal facilities may affect the attainment and maintenance of ambient air quality standards, and livestock emission factors (Health & Safety Code (H&SC) section 40724.6(a)).

The large CAF definition will be used by the local air pollution control and air quality management districts (local air districts) in the development of rules to mitigate emissions from large CAFs. Local air districts designated as nonattainment for the federal one-hour ozone national ambient air quality standard (NAAQS) as of January 1, 2004, must adopt rules that include, among other things, a requirement that large CAFs develop and implement a mitigation plan (H&SC 40724.6(b) and (d)). Areas designated as attainment for the federal ozone standard are also required to develop a large CAF rule unless the local air district makes a determination that any large CAFs in the region will not contribute to a violation of any State or federal air quality standard (H&SC 40724.7(a)). Emission mitigation plans required for large CAFs must demonstrate reasonably available control technology in moderate and serious areas, and best available retrofit control technology in severe and extreme non-attainment areas.

THE PROPOSED REGULATION

ARB staff has developed a proposed large CAF definition after an evaluation of the scientific information on emissions and air quality impacts of livestock facilities. Staff has also evaluated the needed air quality improvements in non-attainment areas and potential impacts to the livestock industry. The evaluation of the air quality impacts included looking at the relative severity of the air quality problem in different areas of California. The definition is based on the combined, aggregate air quality impacts of the livestock industry in California, with an emphasis on the San Joaquin Valley. There is a special focus on the San Joaquin Valley, due to the severity of its ozone problem and the concentration of animals, especially dairy cows, in this region. The San Joaquin Valley accounts for about 78 percent of the milk cows in California. About 15 percent of the cows are in the South Coast Air Basin and 7 percent are distributed in other parts of the State.

It is important that the large CAF definition include most of the livestock in the San Joaquin Valley because substantial new emission reductions are needed in this region to meet federal air quality standards by the required deadlines. Each category of emission sources in the San Joaquin Valley must be considered in the process of identifying new feasible and cost-effective measures needed for attainment. ARB's definition will trigger that process for CAFs through development of local air district rules that will require emission mitigation plans for facilities defined as large CAFs.

In terms of program effectiveness, one goal in developing the large CAF definition was to include most of the livestock animals in the definition, while affecting the fewest possible number of facilities. Data on the size of California facilities (number of animals) was evaluated to look for natural breakpoints in facility size distribution. ARB staff also considered the feasibility of establishing a definition based on individual facility emissions. The individual facility emissions approach was rejected as impractical and uncertain in part because of the developing state of livestock emissions estimation research. The proposed large CAF aggregate emissions approach instead uses the number of animals per facility as a surrogate for facility emissions, which on a district-wide basis will include most of the livestock emissions even if the emission factors change in the future. The aggregate approach was used for each livestock category based on information specific to that category.

The staff's large CAF definition proposal excludes most of the facilities that are clearly small and are typically less capable of absorbing the costs of regulations. The proposed definition provides clarity and certainty for the livestock industry and local air districts, and creates a productive environment for identifying the most cost effective and technically feasible emission reduction strategies.

In order to allow verification of the number of animals at a facility, beginning January 1, 2006, the owner or operator of a large confined animal facility would be required to keep records that specify the numbers of animals maintained daily and such other information as may be required by local air district rules. Such records would have to be maintained at a central place of business for a period of not less than three years and made available upon request to the Executive Officer or Air Pollution Control Officer or their representative.

The details of the proposed definition and the associated rationale are provided in the Initial Statement of Reasons prepared by staff. The full document is available as described in the Availability of Documents section below.

COMPARABLE FEDERAL REGULATIONS

Currently, there are no federal statutes regulating airborne emissions from livestock facilities. However, there are federal regulations related to liquid discharges from livestock facilities. These regulations were considered in the development of the large confined animal facility definition for California. The citation for the federal discharge rules is the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, Part II, United States Environmental Protection Agency, 40 CFR Parts 9, 122, 123, and 412.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: Initial Statement of Reasons for Rulemaking: "Large Confined Animal Facility Definition (Implementation of Senate Bill 700, Florez 2003)" (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of adopting a regulation establishing a definition for large confined animal facility.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing June 23, 2005.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries regarding the substance of the proposed regulatory action may be directed to the designated agency contact persons, Mr. Michael FitzGibbon, Manager of the Emission Inventory Analysis Section, Planning and Technical Support Division at (916) 445-6243 or by e-mail at mfitzgib@arb.ca.gov, or Mr. Patrick Gaffney, Staff Air Pollution Specialist, Planning and Technical Support Division at (916) 322-7303 or by e-mail at pgaffney@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to who nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all

the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at: <http://www.arb.ca.gov/regact/lcaf05/lcaf05.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, private persons and businesses in reasonable compliance with the proposed regulations are presented below.

In defining a large confined animal facility, there are no immediate costs to local air districts and to owners and operators of large CAFs because the act of establishing the definition does not create any direct costs. However, once the definition has been established, each local air district that is designated as a federal nonattainment area for ozone and has large CAFs under its jurisdiction, will be required to adopt a regulation affecting the owners and operators of these facilities. Local air districts may incur costs related to the development and implementation of such regulations. Typically, local air districts can recover any additional costs through fees. As part of the regulation development process, each local air district is required by SB 700 to conduct an impact assessment of rules developed under the legislation. This assessment is to include the impact on the region's employment and economy, among other factors. The range of probable costs to affected sources and businesses is also to be included in the local air district assessment. It is likely that facilities that meet the large confined animal facilities criteria will incur costs to develop and comply with mandated permits and emissions reduction plans. These costs will be incurred later in the process, and not as a result of this definition of large confined animal facilities.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB

is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses. The proposed amendments would provide clarification and compliance flexibility and would improve the way the regulations are administered. No negative economic impacts on small businesses are expected.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the large CAF definitions which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than 12:00 noon, June 22, 2005, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to: lcalf05@listserv.arb.ca.gov and received at the ARB **no later than 12:00 noon, June 22, 2005.**

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon, June 22, 2005.**

Please note that the hearing will not be held at the ARB headquarters building. To ensure that your comment will be available for consideration it is important that your comment is received by the deadline.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601 and 40724.6. This action is proposed to implement, interpret and make specific sections 39011.5 and 40724.6 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In such event the full regulatory text with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice of intention to adopt Section 25106.5-11 in Title 18 of the California Code of

Regulations pertaining to the filing of a single group return in a unitary combined reporting context. There will not be a public hearing unless requested by an interested person at least 15 days before the close of the written comment period. Any request for a public hearing should be submitted to the agency officer named below.

WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., June 27, 2005. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY & REFERENCE

Section 25106.5 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations pertaining to combined reports. Furthermore, Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. The proposed regulatory action interprets, implements, and makes specific Section 25106.5 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This is a new regulation that codifies the existing administrative practice of the Franchise Tax Board to allow California corporate taxpayers that are members of the same unitary combined reporting group to designate one of the affiliated corporations as the "key corporation" and to file a single group return.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed under Part 7, commencing with Government Code Section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on the creation or elimination of jobs in the state: None.

Effect on the creation of new businesses or elimination of existing businesses within the state: None.

Effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The proposed regulation may affect small businesses.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The express terms of the proposed regulatory action, written in plain English, as well as the initial statement of reasons and all information upon which the proposed regulatory action is based, are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If a hearing is held, the hearing room will be accessible to persons with physical disabilities. Also, any person who is in need of a language interpreter, including sign language, should contact the agency officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov, or the designated backup, Doug Powers; Tel.: (916) 845-4962; Fax: (916) 845-3648; E-Mail: doug.powers@ftb.ca.gov. In addition, all questions on the substance of the proposed regulation can be directed to Craig Swieso; Tel.: (916) 845-5244; E-Mail: craig.Swieso@ftb.ca.gov. This notice, the initial statement of reasons, and the express terms of the proposed regulation are also available at the Franchise Tax Board's website at <http://www.ftb.ca.gov/>.

TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

ACTION

Notice of Proposed Rulemaking

SUBJECT

Increase in the Special Fees Charged to Hospitals and Long-term Care Facilities

PUBLIC PROCEEDINGS

NOTICE IS HEREBY GIVEN that the Office of Statewide Health Planning and Development (hereafter the "Office") proposes an amendment of Section 90417 of Title 22 of the California Code of Regulations (CCR) to increase the special fee assessment rate for hospitals and long-term care facilities from 0.027% of gross operating costs to 0.034% of gross operating costs. Interested parties may submit written comments presenting statements, arguments, or contentions relating to the regulation. All such comments must be received by the Office at 818 K Street, Room 400, Sacramento, CA 95814 by 5:00 p.m. on June 20, 2005, which is designated as the close of the written comment period. NOTICE IS ALSO GIVEN that no public hearings will be held. However, a public hearing will be held if, no later than 15 days prior to the close of the written comment period, an interested person, or his or her duly

authorized representative, submits a written request to hold a public hearing to the Contact Person (see Contact Person below).

CONTACT PERSON

General and substantive inquiries and comments concerning the proposed regulation changes may be addressed to Kenrick J. Kwong, Manager, Accounting and Reporting Systems Section, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-7681; fax: 916-327-0377; e-mail: kkwong@oshpd.ca.gov). The Office's backup contact person is Tim Pasco, Systems Analyst, Hospital Financial Data Unit, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-1955; fax: 916-327-0377; e-mail: tpasco@oshpd.ca.gov).

PLAIN ENGLISH OVERVIEW

The purpose of the proposed regulation change is to increase the special fee charged hospitals and long-term care facilities annually from 0.027% to 0.034% of the hospital's and long term care facility's gross operating costs effective July 1, 2005.

POLICY STATEMENT OVERVIEW / INFORMATIVE DIGEST

OSHPD proposes to amend Section 90417 of Title 22 of the California Code of Regulations (CCR). Section 90417 establishes the special fee rates annually assessed health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Each year OSHPD establishes the fee sufficient to produce revenues equal to the appropriation to pay for the required collection, processing, and dissemination of health facility financial and utilization data, and hospital patient-level data.

Section 127280 of the Health & Safety Code sets the special fee rate not to exceed 0.035% of the annual gross operating costs of health facilities. Section 90417 of Title 22 of the CCR currently establishes the rate for hospitals and long-term care facilities at 0.027%. OSHPD proposes to amend CCR Section 90417 increasing the rate for hospitals and long-term care facilities to 0.034%.

AUTHORITY AND REFERENCE

Section 127280 of the Health and Safety Code authorizes OSHPD to establish each year the fee to produce revenues equal to the appropriation to pay for the functions required to be performed pursuant to Division 107—Statewide Health Planning and Development, Part 2—Health Policy and Planning, Chapter 1—Health Planning, commencing with

Section 127125 of the Health and Safety Code, and Part 5—Health Data, Chapter 1—Health Facility Data, commencing with Section 128675 of the Health and Safety Code.

Section 127150 of the Health & Safety Code authorizes the OSHPD director to implement, interpret, or make specific regulations for the implementation of Chapter 1—Health Planning, commencing with Section 127125 of the Health and Safety Code.

Section 128810 of the Health & Safety Code authorizes OSHPD to administer Chapter 1—Health Facility Data, commencing with Section 128675 of the Health & Safety Code, and make all regulations necessary to implement the provisions and achieve its purposes.

FISCAL IMPACT ESTIMATES

- A. Estimate of Cost or Savings to Any State Agency (Cal. Gov't Code § 11346.5(a)(6)): None.
- B. Cost to Any Local Agency or School District That is Required to be Reimbursed by the State (Cal. Gov't § 11346.5(a)(6)): None.
- C. Non-Discretionary Cost or Savings Imposed on Local Agencies (Cal. Gov't Code § 11346.5(a)(6)): Insignificant.
- D. Cost or Savings in Federal Funding to the State (Cal. Gov't Code § 11346.5(a)(6)): None.
- E. Impact on Housing Costs (Cal. Gov't Code § 11346.5(a)(12)): None.
- F. Potential Cost Impact on Private Persons or Affected Businesses, Other Than Small Businesses (Cal. Gov't Code § 11346.5(a)(9)): Insignificant.

DETERMINATIONS

As required by Government Code Section 11346.5(a)(5), the Office has determined that the proposed regulation would not impose a reimbursable mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

As required by Government Code Section 11346.5(a)(8), the Office has determined that the proposed regulation would not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

As required by Government Code Section 11346.3(b)(1), the Office has determined that the proposed regulation would not significantly affect the following:

- 1) The creation or elimination of jobs within the State of California.

- 2) The creation of new businesses or the elimination of existing businesses within the State of California.
- 3) The expansion of businesses currently doing business within the State of California.

As required by Section 4 of Title 1 of the California Code of Regulations, the Office has determined that the proposed regulation will not significantly affect small businesses as defined in Government Code Section 11342.610. No hospitals meet the definition of a small business, and the long-term care facilities that meet the definition of a small business will be charged the same rate as all long-term care facilities. The proposed fee results in an increase of the special fee for hospitals and long-term care facilities of 70 cents more per \$10,000 of gross operating costs, and is not significant.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED AMENDMENT, AND RULEMAKING FILE

The Office prepared an Initial Statement of Reasons for the proposed regulations. This statement and the text of the proposed regulations (in italics and strikeout format) are available from the Office at the address indicated above (see Contact Person). In addition, the Initial Statement of Reasons and text of the proposed changes will be sent to all California-licensed hospitals and long-term care facilities. This notice, the Initial Statement of Reasons, and the text of the proposed changes will also be available on the Office's web site at: <http://www.oshpd.ca.gov/HID/AboutHID/laws.htm>.

Any person submitting a comment on the proposed regulations has the right to request a copy of the Final Statement of Reasons once it has been prepared. Additionally, any person may view the Rulemaking File, which is a complete record of the rulemaking process (see Contact Person).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the public comment period or at the end of the public hearing, if one is requested and held, the Office may, without further notice, adopt the proposed regulatory changes as filed or adopt them with non-substantial or grammatical changes as it deems appropriate. If the Office changes or modifies the express terms of the proposed regulatory action, other than non-substantial or grammatical changes, the full text of the modified regulations will be made available to the public at least 15 days before they are adopted. A request for copies of modified regulations should be submitted to the Contact Person at the address noted above.

ALTERNATIVES

According to Government Code Section 11346.5(a)(13), the Office must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 24. CALIFORNIA
ENERGY COMMISSION****REVISIONS TO THE CALIFORNIA BUILDING
ENERGY EFFICIENCY STANDARDS
CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PART 6, SECTION 118(i)3
(CALIFORNIA ENERGY CODE)
DOCKET # 05-BSTD-1****COOL ROOF COATINGS
PERFORMANCE REQUIREMENTS**

The California Energy Commission proposes to adopt changes to the Building Energy Efficiency Standards contained in the California Code of Regulations (CCR), Title 24, Part 6, Section 118(i)3. The Energy Commission is proposing amendments regarding the physical performance requirements of liquid-applied cool roof coatings.

**PUBLIC COMMENT PERIOD/AVAILABILITY OF
DOCUMENTS/CONTACT PERSONS**

The Commission has prepared an Initial Statement of Reasons regarding the need for the proposed amendments. The Commission has also published the Express Terms of the proposed amendment language. These documents can be obtained from the contact persons designated below or from the Commission website, www.energy.ca.gov/title24/roofcoatings/. The Commission's Energy Efficiency Committee will hold a public hearing on the following date to receive public comment on the Express Terms in response to a petition for rulemaking submitted by a consortium of liquid-applied roof coating manufacturers led by National Coatings Corporation. The Committee hearing will be held as follows:

TUESDAY, JUNE 7, 2005

10:00 a.m.
California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair Accessible)

Audio from this meeting will be broadcast over the Internet.

For details, please go to
www.energy.ca.gov/webcast.

At this hearing any person may present statements or arguments relevant to the proposed action. Interested persons may also submit written comments; if possible, please provide written comments to be considered at the Committee hearing by June 3, 2005. The Commission appreciates receiving written comments at the earliest possible date. The Energy Efficiency Committee may hold another hearing after June 7, 2005, if necessary.

The hearing before the full Commission for adoption of the Express Terms will be held on the following date unless the Commission decides to modify the Express Terms through 15-day language. Written comments on the Express Terms will be accepted by the Energy Commission until the end of the adoption hearing on June 22, 2005.

**PROPOSED ADOPTION DATE—FULL
COMMISSION HEARING****WEDNESDAY, JUNE 22, 2005**

10:00 a.m.
California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair Accessible)

Audio from this meeting will be broadcast over the Internet.

For details, please go to
www.energy.ca.gov/webcast.

The Energy Commission may adopt the proposed changes in the Express Terms at the above hearing or may decide to modify the Express Terms in a manner that is sufficiently related to the original notice of proposed action. The Commission may modify the Express Terms in any way it determines appropriate, including but not limited to those alternatives identified in the "Consideration of Alternatives" section below. If the Energy Commission decides to modify the Express Terms, the full text of the proposed modifications (15-day language) will be available to the public for at least 15 days prior to the date on which the Energy Commission adopts these modifications, and this adoption date will be a publicly noticed hearing date. Interested persons may then comment on the modifications during the 15-day period, or until such amendments are adopted.

Please address both procedural and technical questions to the following **designated contact persons**:

Elaine Hebert
RE: Docket Number 05-BSTD-1
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, CA 95814
Telephone No.: (916) 654-4800
Facsimile No.: (916) 654-4304
Email address: ehbert@energy.state.ca.us

If Ms. Hebert is unavailable, contact

Tony Rygg
Telephone No.: (916) 653-7271
Email address: trygg@energy.state.ca.us

When comments are emailed, the comments should be a scanned copy on your organization's letterhead and include your signature.

This notice, the Express Terms, the Initial Statement of Reasons, and all of the information upon which the proposed changes are based will be posted to the rulemaking website, www.energy.ca.gov/title24/roofcoatings/, and contained in the rulemaking file maintained by the Commission's Dockets Office.

The Energy Commission's Public Adviser, Margaret J. Kim, provides public assistance in participating in Energy Commission activities. If you would like information on how to participate in this proceeding, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at pao@energy.state.ca.us. If you have a disability and require assistance to participate in the workshop(s), please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

News media inquiries should be directed to Claudia Chandler, Assistant Executive Director, at (916) 654-4989.

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt these amendments to the building standards under the authority granted by Public Resources Code Sections 25213 and 25402(a) and (b), and to make specific the requirements of Sections 25402(a) and (b).

INFORMATIVE DIGEST

Summary of Existing Laws

Public Resources Code Sections 25402(a) and (b) were enacted in 1975 as part of the enabling legislation establishing the Energy Commission and its basic mandates. These sections require the Energy Commission to adopt, implement, and periodically update energy efficiency standards for both residential and nonresidential buildings. Public Resources Code Sec-

tion 25213 directs the Energy Commission to adopt rules and regulations, as necessary, to carry out its statutory duties.

Summary of Existing Regulations

The Building Energy Efficiency Standards were first adopted in 1976 and have been updated periodically since then as directed by statute (the Standards have been updated roughly every three years, more frequently than that in the early years).

The Building Energy Efficiency Standards allow builders to claim performance credit for "cool roofs," that is, roofs that have solar reflectance and thermal emittance properties that reduce the need for air conditioning to cool the building. To receive performance credit under the Standards, liquid-applied roof coatings must meet specific physical performance requirements, listed in Section 118(i)3, Table 118-C, to qualify as cool roof products. These requirements include minimum elongation (stretching until breakage) requirements at low temperature (0°F). The elongation must be measured in conformance with American Society of Testing and Materials (ASTM) D2370-98 (2002), *Standard Test Method for Tensile Properties of Organic Coatings*.

Summary of Effect

The proposed action would add an alternate test approach to these requirements to allow minimum low-temperature flexibility instead of low-temperature elongation. The flexibility would be measured in conformance with ASTM D522-93a (2001), *Standard Test Methods for Mandrel Bend Test of Attached Organic Coatings*.

The proposed action results from a petition for rulemaking filed with the Commission on April 4, 2005, to change the adopted physical performance requirements in the 2005 Standards, Section 118(i)3 and Table 118-C, for qualifying as cool roofs liquid-applied roof coatings on low-sloped nonresidential buildings. The petitioners, a consortium of 24 manufacturers led by National Coatings Corporation, claim that the adopted test approach for low temperature performance unnecessarily restricts the qualified cool roof coating products only to those that meet minimum elongation characteristics requirements at 0°F, and that other coating products that cannot meet the minimum elongation requirements are durable and perform fully satisfactorily in California climate conditions, including in California climates with very cold winters. The petitioners propose that the Commission consider adding a test approach that tests for minimum flexibility rather than minimum elongation at low temperatures. This would allow many more coating products to be used in the state as cool roof products that, the petitioners claim, still perform well in California climates. Previously, on March 17, 2005, Energy Commission staff received a letter from the

Roof Coating Manufacturers Association (RCMA) regarding the same section, Section 118(i)3, Table 118-C. RCMA suggested that the Energy Commission eliminate the physical performance requirements for liquid-applied cool roof coatings in Section 118(i)3.

On April 13, 2005, the Energy Commission accepted the National Coatings Corporation consortium's petition to initiate a rulemaking proceeding on the changes proposed above. During this proceeding the Energy Commission will also consider the comments from RCMA.

Comparable Federal Statute or Regulations

There are no comparable federal statutes or regulations.

Document Incorporated by Reference

American Society of Testing and Materials (ASTM) D522-93a (2001), *Standard Test Methods for Mandrel Bend Test of Attached Organic Coatings*, would be incorporated by reference. Copies are available from the contact persons designated above.

Policy Statement Overview

The statutorily mandated purpose of the Commission's Building Energy Efficiency Standards is to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy. The intent of Section 118(i)3 and Table 118-C is that liquid-applied coatings meet physical performance requirements that insure that the coatings will be durable under a range of California conditions and thereby will reliably achieve the energy savings expected by the Standards. The petitioners assert that this can be accomplished by adding the proposed flexibility test as an alternate to the current elongation test. If adopted by the Energy Commission, the proposed changes would result in less restrictive regulations while reliably accomplishing the energy savings expected by the Standards.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Energy Commission has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: No
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: No
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: No
- D. Other nondiscretionary cost or savings imposed on local agencies: No
- E. Cost or savings in federal funding to the state: No

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES, INCLUDING SMALL BUSINESSES

The Energy Commission has made an initial determination that the proposed amendment will not have a significant statewide adverse economic impact on businesses including small businesses, including the ability of California businesses to compete with business in other states. Such a determination is dictated by common sense, as the proposed amendment would merely allow a greater variety of existing products to be used to satisfy the requirement for roof coating applications.

The proposed changes to the regulations do not change the energy efficiency requirements of public or private building owners. By adding an alternate testing approach, the changes merely add flexibility to the requirements that must be met by roof coating manufacturers to insure durability of those products to achieve the expected energy savings of the Standards. This results in less restrictive regulations while still accomplishing the energy savings expected by the Standards. This additional flexibility could not possibly cause a statewide adverse impact on businesses.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

Representative persons and businesses will incur no costs in compliance with the proposed amendments, because the amendments would increase options for compliance, thereby potentially enabling compliance at lower cost.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The Energy Commission makes an initial determination that the proposed changes are necessary for the public's health, safety, or welfare.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The Energy Commission has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
The proposed changes will not result in creation or elimination of jobs within California.
- The creation of new businesses or the elimination of existing businesses within the State of California.
The proposed changes will not result in the creation or elimination of businesses in California.
- The expansion of businesses currently doing business with the State of California.

The proposed changes will not impact whether or not current businesses in California expand.

**INITIAL DETERMINATION OF SIGNIFICANT
EFFECT ON HOUSING COSTS**

The Energy Commission has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The Commission has considered two possible alternatives to the proposed changes: 1) eliminate the physical performance requirements for liquid-applied coatings in their entirety, and 2) make no changes to the current Standards. The Commission believes it is critically important to have physical performance requirements for coatings to insure that the coatings are durable and reliably achieve the energy savings expected for cool roofs. Based on information received to date, the Commission believes that the recommendations for adding an alternate testing approach in the proposed changes are reasonable. If the Commission adopts the proposed amendments, it must determine that it has not identified a more reasonable alternative that would more effectively satisfy the purpose of the amendments and be less burdensome to affected private persons.

FINAL STATEMENT OF REASONS

Once amendments are adopted, the Commission will prepare a Final Statement of Reasons responding to all substantive public comments pertinent to the proposed regulation. A copy of the Final Statement of Reasons can be obtained from either of the designated contact persons identified above or on the Commission's website at www.energy.ca.gov/title24/roofcoatings/.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these

prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

POTENTIAL TAKE OF FULLY PROTECTED SPECIES

The Department of Fish and Game (Department) proposes to take Sierra Nevada bighorn sheep for recovery purposes if take proves necessary to ensure respiratory disease is not spread from domestic sheep to bighorn herds. The Department and the U.S. Fish and Wildlife Service (USFWS) have been considering a variety of measures to minimize the likelihood that Sierra Nevada bighorn sheep will come into contact with domestic sheep. The incompatibility of bighorn and domestic sheep has been thoroughly established in the scientific literature. The etiology of transmission of respiratory diseases from domestic sheep to bighorn sheep is such that it has led to extensive losses among bighorn herds in the western United States. Once bighorn have been exposed, they can live long enough to transmit disease throughout an entire region, with losses occurring among all age classes. As long as domestic sheep grazing continues to occur in proximity to bighorn sheep in the eastern Sierra Nevada, the risk of disease transmission exists.

The Department is working with all parties involved to greatly increase the level of monitoring of bighorn sheep through the use of VHF and GPS collars and field surveys, and to increase monitoring of domestic sheep through daily observation by agency personnel of herding operations and GPS collaring of domestic sheep. It is the Department's goal that the intensive monitoring and, if necessary, efforts to haze any approaching bighorn away from domestic sheep, will prevent any contact that could transfer disease to bighorn sheep. However, in the event a bighorn makes contact with domestic sheep (which would most likely result from bighorn males moving into domestic sheep herds) and there are no non-lethal means for removing the bighorn sheep from the wild, the USFWS and the Department are considering the lethal removal of the bighorn sheep before it comes in contact with other bighorns as the most prudent action to protect bighorn herds from exposure to disease. The Department and USFWS believe that the ramifications of allowing a potentially infected animal to travel back to native bighorn herds and spread disease could be far more disastrous to bighorn recovery than the loss of a single animal through lethal take. At this time, the Department anticipates that its employees would be responsible for monitoring the movements of bighorn sheep and domestic sheep in areas where contact is most likely, and that Department employees would also remove, by lethal means if necessary, any bighorn sheep that comes in contact with domestic sheep. If the Department decides to proceed with this program and determines that its staff is unable to carry out all

necessary activities, the Department might issue take authorization to one or more non-employees to assist with the program, although the Department does not anticipate it would need to issue any such authorizations to non-employees.

Sierra Nevada bighorn sheep received emergency listing as an endangered species under the federal Endangered Species Act in 1999 and final listing in 2000. It was previously listed as endangered under the California Endangered Species Act and is also designated as a fully protected mammal under California law. If approved by the Department, the activities described in this notice will be carried out in compliance with federal and state law and in consultation with USFWS. Pursuant to California Fish and Game Code section 4700, the Department may authorize take of a fully protected mammal for recovery purposes after 30 days notice to affected and interested parties through publication of this notice. After 30 days, the Department will consider any public comments received and decide whether to authorize the non-lethal and lethal take of bighorn sheep for recovery purposes, as described in this notice. Public comments should be addressed to the Department of Fish and Game, 407 West Line Street, Bishop CA 93514, Attn: Vern Bleich.

DECISION NOT TO PROCEED

CALIFORNIA HORSE RACING BOARD

NOTICE OF DECISION NOT TO PROCEED WITH RULEMAKING ACTION RULE 1663. ENTRY OF CLAIMED HORSE

Pursuant to Government Code Section 11347(a), the California Horse Racing Board has decided not to proceed with the amendment of Rule 1663, Entry of Claimed Horse, of Title 4, Division 4, of the California Code of Regulations.

The notice of proposal to amend Rule 1663 was published in the California Regulatory Notice Register, on April 8, 2005, notice file number Z-05-0329-06.

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov.

You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339; (916) 323-6225; FAX (916) 323-6826. Please request by OAL file number.

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
(Cal. Code Regs., tit. 1, sec. 100)
OAL File No. 05-0308-01N**

**DECISION REGARDING DISAPPROVAL OF A
CHANGE WITHOUT REGULATORY EFFECT**

In re:

**AGENCY: STATE BOARD OF EDUCATION
RULEMAKING ACTION:**

**Repeal sections 303, 304, and 352 of title 5 of the
California Code of Regulations**

**PROPOSED CHANGE WITHOUT
REGULATORY EFFECT**

The State Board of Education (Board) proposes to repeal as changes without regulatory effect the following three regulations, which were adopted in 1969. Rule 303 provides: "A pupil may not leave the school premises at recess, or at any other time before the regular hour for closing school, except in case of emergency, or with the approval of the principal of the school." Rule 304 provides: "Every pupil shall leave the schoolroom at recess unless it would occasion an exposure of health." Rule 352 provides: "A pupil shall not be required to remain in school during the intermission at noon, or during any recess."

SUMMARY OF DECISION

On April 19, 2005, the Office of Administrative Law (OAL) disapproved the above-referenced proposed change without regulatory effect. The reasons for the disapproval are summarized here and explained in detail below. The Board has not demonstrated that the proposed changes would "not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision," as is required by California Code of Regulations, title 1, section 100.

Date: April 25, 2005

MICHAEL McNAMER
Senior Counsel

for: WILLIAM L. GAUSEWITZ
DIRECTOR

Original: Jack O'Connell, Superintendent of
Public Instruction

cc: Debra Strain

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF BEHAVIORAL SCIENCES

License Title, Deletion to Conform to Statue and
Form Changes

This action conforms regulations to recent changes in statutes, including changing the licensing title from licensed marriage, family and child counselor or marriage, family and child counselor to licensed marriage and family therapist or marriage and family therapist. This action also reflects new statutory requirements for trainees and interns consistent with Business and Professions Code section 4980.43(e) and (f).

Title 16

California Code of Regulations

AMEND: 1805.1, 1807, 1807.2, 1811, 1816,
1816.1, 1816.4, 1833, 1833.1, 1833.2, 1846, 1846.1,
1850.7, 1874, 1886, 1887.4, 1887.9, 1889, 1889.1,
1889.2, 1889.3

Filed 04/25/05

Effective 05/25/05

Agency Contact: Sandra Wright (916) 445-4933

**BOARD OF FORESTRY AND FIRE
PROTECTION**

AB 2420 Forest Fire Prevention Exemption
Emergency Rule II, 2004

This is the re-adoption of an emergency amendment to the regulation that lists the types of timber operations exempt from the standard requirements to prepare and submit a harvesting plan and a completion report, and meet stocking standards after the harvest so that it will include the forest fire prevention exemption created in Public Resources Code section 4584, subdivision (k), that took effect on September 23, 2004.

Title 14

California Code of Regulations

ADOPT: 1038(i) AMEND: 1038(e)

Filed 04/25/05

Effective 05/10/05

Agency Contact:

Christopher Zimny (916) 653-9418

CALIFORNIA HORSE RACING BOARD

Application for License to Conduct a Horse Racing Meeting

This regulatory action reduces the maximum dosage amount that a test sample shall contain for flunixin from 6.5 micrograms to 20 nanograms, for ketoprofen from 50 nanograms to 10 nanograms, and changes authorized bleeder medication procedures in accordance with recommendations made by the Racing Medication and Testing Consortium.

Title 4

California Code of Regulations

AMEND: 1844, 1845

Filed 04/27/05

Effective 05/27/05

Agency Contact: Harold Coburn (916) 263-6397

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Waste Tire Hauler Registration & Manifesting Regulations—Retreaders

The readoption of this emergency rulemaking action allows retreaders to self-certify with the CIWMB and allows self-certified retreaders to substitute customer invoices for the manifest forms currently required by the California Uniform Waste and Used Tire Manifest system. The previous readoption of this emergency action was repealed by operation of law 4-22-2005.

Title 14

California Code of Regulations

ADOPT: 18456.2.1, 18460.2.1 AMEND: 18449, 18450, 18451, 18456, 18459, 18459.1, 18459.2.1, 18459.3, 18461, 18462

Filed 04/25/05

Effective 04/25/05

Agency Contact:

Wendy Breckon (916) 341-6068

DEPARTMENT OF HEALTH SERVICES

BabyBIG Fee Increase

The Department of Health Services is amending section 3030, title 17, California Code of Regulations pertaining to the fee for Botulism Immune Globulin. The adjustment of the fee by the Department of Health Services Director is exempt from review by the Office of Administrative Law pursuant to Health and Safety Code section 123702(d).

Title 17

California Code of Regulations

AMEND: 3030

Filed 04/26/05

Effective 04/26/05

Agency Contact:

Charles E. Smith (916) 440-7690

DEPARTMENT OF HOUSING AND

COMMUNITY DEVELOPMENT

Community Development Block Grant Program

This regulatory action deals with the Community Development Block Grant Program, which distributes federal funding for grants relating to housing and economic development. The revisions establish expenditure milestones for programs to meet, authorize longer term projects, and make related changes.

Title 25

California Code of Regulations

AMEND: 7056, 7060, 7062.1, 7064, 7066, 7078.4

Filed 04/25/05

Effective 05/25/05

Agency Contact: Lenora Frazier (916) 323-4475

DEPARTMENT OF SOCIAL SERVICES

Fry v. Saenz Court Case

This regulatory action adopts regulations that provide for CalWORKs eligibility to specified classes of disabled persons who are otherwise eligible for these benefits when enrolled full-time in high school or a vocational/technical training program even though they cannot reasonably be expected to complete either program before reaching age 19. This action is in response to a Peremptory Writ of Mandate in the case of *Fry vs. Saenz*.

Title MPP

California Code of Regulations

AMEND: 42-101

Filed 04/22/05

Effective 04/22/05

Agency Contact: Alison Garcia (916) 657-2586

DEPARTMENT OF TOXIC SUBSTANCES

CONTROL

Amendment of Chapter 12

This regulatory action is a change without regulatory effect. It will amend Chapter 12 in Division 4.5 of Title 22 by moving the Appendix which is currently after Article 7 to the end of the Chapter (after Article 8).

Title 22

California Code of Regulations

AMEND: Appendix

Filed 04/21/05

Effective 04/21/05

Agency Contact: Joan Ferber (916) 322-6409

FISH AND GAME COMMISSION

Commercial Squid Fishery

The regulatory action deals with commercial squid fishery brail permit upgrade provisions, (Prior OAL File 05-0124-01S.)

Title 14
California Code of Regulations
AMEND: 149.1
Filed 04/22/05
Effective 04/22/05
Agency Contact: Sherrie Koell (916) 653-4899

**OFFICE OF SPILL PREVENTION AND
RESPONSE**

Tank Vessel Escort Program for LA/Long Beach

This action amends existing escort tug bollard pull re-test requirements for LA/Long Beach Harbor to allow a one year extension of the re-test deadline for good cause.

Title 14
California Code of Regulations
AMEND: 851.23
Filed 04/25/05
Effective 04/25/05
Agency Contact:
Larry McDaniel (916) 324-0145

**PHYSICAL THERAPY BOARD OF CALIFORNIA
Criteria for Approval of Facilities**

This regulatory action is to amend section 1398.38 of Title 16 regarding the requirements for facilities to become approved by the Board to supervise foreign educated physical therapist graduates during their period of clinical service. This regulation provides for the certification of these facilities by completing two forms, which are incorporated by reference.

Title 16
California Code of Regulations
AMEND: 1398.38
Filed 04/21/05
Effective 05/21/05
Agency Contact:
Christina Metzen (916) 561-8271

**SPEECH-LANGUAGE PATHOLOGY AND
AUDIOLOGY BOARD
Disciplinary Guidelines**

This regulatory action amends section 1399.155 of Title 16. This amendment updates the current language to include a new paraprofessional licensure category of speech-language pathology assistants as established in Business and Professions Code section 2538, et. seq. In addition, the amendment does the following: modifies the language of the Disciplinary Guidelines to more accurately reflect the governing structure of the Speech-Language Pathology and Audiology Board; allows Respondents to develop a plan for completing coursework related to a violation without requiring advance input from the Board; and specifies an additional postdecision disciplinary action that will result in an extension of probation and continued jurisdiction by the Board.

Title 16
California Code of Regulations
AMEND: 1399.155
Filed 04/21/05
Effective 05/21/05
Agency Contact: Candace Raney (916) 263-2666

STATE ALLOCATION BOARD

**Leroy F. Greene School Facilities Act of 1998—
Dwelling Units**

This regulatory action clarifies the methodology that school districts use to calculate their enrollment projections to determine new construction eligibility.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.42
Filed 04/26/05
Effective 04/26/05
Agency Contact: Robert Young (916) 445-0083

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN DECEMBER 8, 2004
TO APRIL 27, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

04/26/05 AMEND: 1859.2, 1859.42
04/19/05 AMEND: 172.4, 172.5, 172.6, 172.7,
172.8, 172.9, 172.10
03/21/05 AMEND: 549.70, 549.71, 549.72, 549.74
03/02/05 AMEND: 1859.73.2, 1859.145.1
02/28/05 AMEND: 1859.2
02/28/05 AMEND: 1859.71.3, 1859.78.5
02/28/05 AMEND: 1859.2
02/24/05 AMEND: 211
02/23/05 ADOPT: 1859.90.1 AMEND: 1859.2
02/15/05 AMEND: 1859.81
02/03/05 AMEND: 1859.106
02/03/05 ADOPT: 1859.78.8 AMEND: 1859.2,
1859.60, 1859.61, 1859.78.6
01/31/05 AMEND: 1859.2, 1589.33, 1859.35,
1859.77.3, 1859.82, 1859.83
01/26/05 ADOPT: 20107
01/04/05 AMEND: 18703.4, 18730, 18940.2,
18942.1, 18943

01/03/05 ADOPT: Division 8, Chapter 108, Section 59530.
 12/31/04 ADOPT: 18229
 12/31/04 AMEND: 18545
 12/20/04 ADOPT: 1859.71, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83
 12/16/04 ADOPT: 1859.51.1, 1859.70.2 AMEND: 1859.2, 1859.51, 1859.70, 1859.103,

Title 3

04/15/05 AMEND: 1446.9(c), 1454.16(c)
 04/04/05 AMEND: 6400
 03/07/05 ADOPT: 1392.8.1(3) AMEND: 1392.8.1.(2)
 03/01/05 ADOPT: 796, 796.1, 796.2, 796.3, 796.4, 796.5, 796.6, 796.7, 796.8, 796.9 AMEND: Article 8 heading REPEAL: 795.10, 795.13, 795.14, 795.16, 795.17, 795.19, 795.30, 795.32, 795.33, 795.50
 02/28/05 AMEND: 3430(b)
 02/24/05 AMEND: 1280.2
 02/23/05 AMEND: 3423(b)
 02/15/05 ADOPT: 4603(g)
 02/02/05 AMEND: 3430(b)
 01/21/05 AMEND: 3700 (b)(c)
 01/21/05 ADOPT: 3700
 01/14/05 AMEND: 3700(c)
 01/13/05 AMEND: 3962(a)
 12/20/04 REPEAL: 305, 306

Title 4

04/27/05 AMEND: 1844, 1845
 04/04/05 ADOPT: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337
 03/22/05 AMEND: 12250, 12270, 12271, 12272
 02/28/05 AMEND: 2424
 02/11/05 ADOPT: 7030, 7031, 7032, 7033, 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7043, 7044, 7045, 7046, 7047, 7048, 7049, 7050
 02/04/05 AMEND: 1371
 01/28/05 ADOPT: 12270, 12271, 12272
 12/23/04 ADOPT: 10163, 10164 AMEND: 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162
 12/20/04 ADOPT: 12200, 12200.1, 12200.3, 12200.5, 12200.6, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11, 12200.13, 12200.14, 12200.15, 12200.16, 12200.17, 12200.18, 12200.20, 12200.21, 12201, 12202, 12203, 12203A, 12203.1, 12203.2, 12203.3, 12203.
 12/16/04 ADOPT: 10300, 10301, 10302, 10303, 10304, 10305, 10306, 10307, 10308, 10309, 10310, 10311, 10312, 10313,

10314, 10315, 10316, 10317, 10318, 10319, 10320, 10321, 10322, 10323, 10324, 10325, 10326, 10327, 10328, 10329, 10330, 10331, 10332, 10333, 10334, 1

12/16/04 ADOPT: 144

Title 5

04/14/05 AMEND: 19836
 03/24/05 ADOPT: 80307 AMEND: 80300, 80303, 80310, 80412 REPEAL: 80307
 03/21/05 AMEND: 19828.1
 03/02/05 AMEND: 55607, 59509 REPEAL: 55310
 02/10/05 ADOPT: 19817.1, 19826.1, 19828.1, 19837 AMEND: 19814, 19814.1, 19817, 19826, 19828
 02/09/05 REPEAL: 9540, 9541, 9542, 9543, 9544, 9545, 9546, 9547, 9548, 9549, 9550
 01/31/05 AMEND: 80048.3, 80457, 80523.1 REPEAL: 80413.1
 01/19/05 ADOPT: 19814.1, 19832, 19833, 19834, 19835, 19836 REPEAL: 19814
 01/10/05 ADOPT: 3088.1, 3088.2
 12/08/04 ADOPT: 9517.1 AMEND: 9515, 9517

Title 8

04/19/05 REPEAL: 16003
 04/14/05 AMEND: 8354, 8397.10, 8397.11, 8397.12, 8397.13.
 04/06/05 AMEND: 230.2
 04/06/05 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9, 9792.10, 9792.11 REPEAL: 9792.6
 03/16/05 AMEND: 344.30
 03/08/05 AMEND: 15220, 15220.1, 15220.3, 15220.4
 03/07/05 AMEND: 5144
 02/28/05 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4, 9767.5, 9767.6, 9767.7, 9767.8, 9767.9, 9767.10, 9767.11, 9767.12, 9767.13, 9767.14
 02/04/05 AMEND: 5146
 01/26/05 AMEND: 5144
 01/26/05 AMEND: 3456
 01/24/05 AMEND: 3427
 12/31/04 ADOPT: 9785.4, AMEND: 9725, 9726, 9727, 9785, 9785.2, 9785.3, 9805, 10150, 10152, 10156, 10158, 10160, 10163, 10165.5 REPEAL: 10151, 10154
 12/31/04 ADOPT: 9768.1, 9768.2, 9768.3, 9768.4, 9768.5, 9768.6, 9768.7, 9768.8, 9768.9, 9768.10, 9768.11, 9768.12, 9768.13, 9768.14, 9768.15, 9768.16, 9768.17
 12/30/04 AMEND: 3380(d)
 12/27/04 ADOPT: 32032, 32033, 32034, 32035, 81000, 81005, 81010, 81020, 81030, 81040, 81050, 81055, 81060, 81065, 81070, 81075, 81080, 81090, 81100, 81105, 81110, 81115, 81120, 81125,

81130, 81135, 81140, 81145, 81150,
81155, 81160, 81165, 81170, 81175,
81180,
12/15/04 ADOPT: 9788.01, 9788.1, 9788.11,
9788.2, 9788.3, 9788.31, 9788.32,
9788.4, 9788.45, 9788.5, 9788.6, 9788.7,
9788.8, 9788.9, 9788.91
12/15/04 AMEND: 9789.11
12/09/04 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9,
9792.10, 9792.11 REPEAL: 9792.6
12/08/04 AMEND: 1602(a)
12/08/04 AMEND: 3210, 3212

Title 9

03/25/05 ADOPT: 13000, 13005, 13010, 13015,
13020, 13025, 13030, 13035, 13040,
13045, 13050, 13055, 13060, 13065,
13070, 13075 AMEND: 9846, 10125,
10564
01/25/05 AMEND: 9525

Title 10

04/01/05 ADOPT: 2218.60, 2218.61, 2218.62,
2218.63
04/01/05 AMEND: 260.140.72, 260.140.72.1,
260.140.72.5
03/25/05 AMEND: 1556
03/17/05 ADOPT: 2712 AMEND: 2835, 2840,
2840.1, 2851, 2930
03/02/05 AMEND: 2318.6, 2353.1, 2354
02/09/05 AMEND: 260.165
01/14/05 AMEND: 2498.6
01/07/05 ADOPT: 2699.6608 AMEND: 2699.100,
2699.200, 2699.201, 2699.205, 2699.209,
2699.400, 2699.401, 2699.6500,
2699.6600, 2699.6606, 2699.6607,
2699.6611, 2699.6613, 2699.6617,
2699.6619, 2699.6625, 2699.6631,
2699.6705, 2699.6715, 2699.6717,
2699.6725, 2699.
12/28/04 AMEND: 2698.30, 2698.31, 2698.32,
2698.33, 2698.34, 2698.35, 2698.36,
2698.37, 2698.38, 2698.39, 2698.40,
2698.41 REPEAL: 2698.42, 2698.43,
2698.44, 2698.45
12/27/04 AMEND: 4010, 4011, 4013, 4016, 4018,
4019, 5000, 5001, 5002, 5003, 5005,
5006, 5007, 5008, 509, 5010, 5013, 5020,
5050, 5051, 5060, 5061, 5070, 5101,
5110, 5111, 5112, 5113, 5114, 5115,
5116, 5117, 5118, 5119, 5260, 5261,
5262, 5263, 5264, 5266, 5267, 5
12/27/04 AMEND: 2580.1, 2580.2, 2580.3,
2580.4, 2580.5, 2580.6, 2580.7, 2580.8,
2580.9
12/22/04 AMEND: 2498.5
12/22/04 AMEND: 2498.4.9, 2498.5
12/21/04 AMEND: 2498.4.9, 2498.5

12/21/04 AMEND: 2498.4.9, 2498.5
12/21/04 AMEND: 2498.4.9, 2498.5
12/17/04 ADOPT: 2194., 2194.1, 2194.2, 2194.3,
2194.4, 2194.5, 2194.6, 2194.7, 2194.8

Title 11

03/30/05 AMEND: 970, 970.1, 971., 972, 972.1,
972.2, 972.4, 972.5, 972.6, 972.7, 972.9,
973, 973.1, 974, 974.1, 975, 975.1, 975.2,
975.3, 975.4, 975.5, 975.6, 976, 976.1,
976.2, 976.3, 976.4 REPEAL: 975.1
03/30/05 ADOPT: 2037, 2038 AMEND: 2010,
2037, 2038, 2050
03/15/05 ADOPT: 996
02/18/05 AMEND: 63.5
02/16/05 AMEND: 995.5
01/26/05 AMEND: 1080
01/19/05 ADOPT: 968.97, 968.99 AMEND:
968.20, 968.35, 968.44, 968.60
01/05/05 ADOPT: 51.22
01/03/05 AMEND: 51.17
01/03/05 AMEND: 26.4

Title 12

02/16/05 AMEND: 503(f)

Title 13

03/30/05 AMEND: 25.15, 25.18, 25.19, 25.22
03/21/05 ADOPT: 2011 AMEND: 2180.1, 2181,
2184, 2185, 2186, 2192, 2194
03/10/05 AMEND: 2260, 2262, 2262.4, 2262.5,
2262.6, 2262.9, 2263, 2265, 2266.5
02/22/05 AMEND: 220.04, 220.12, 221.12
02/08/05 AMEND: 330.32
02/02/05 AMEND: 124.92, 124.93
01/31/05 AMEND: 1956.1, 1956.2, 1956.3, 1956.4
01/27/05 ADOPT: 2485
01/26/05 ADOPT: 15.07
01/07/05 AMEND: 1969
01/04/05 AMEND: 553.70
12/28/04 AMEND: 1
12/27/04 ADOPT: 1971
12/27/04 ADOPT: 150.06
12/23/04 AMEND: 1151.1, 1151.2, 1151.3, 1151.4,
1151.5, 1151.5.6, 1151.7, 1151.8,
1151.8.4, 1151.9, 1151.9.1, 1151.10,
1152.2, 1152.3, 1152.4, 1152.4.1, 1152.6,
1152.7, 1152.7.1, 1152.8
12/22/04 ADOPT: 151.00
12/16/04 AMEND: 2284
12/15/04 ADOPT: 154.00
12/09/04 ADOPT: 423.00

Title 14

04/25/05 ADOPT: 18456.2.1, 18460.2.1 AMEND:
18449, 18450, 18451, 18456, 18459,
18459.1, 18459.2.1, 18459.3, 18461,
18462
04/25/05 AMEND: 851.23

04/22/05 AMEND: 149.1
 04/19/05 AMEND: 670.2
 04/13/05 AMEND: 2030, 2305, 2310, 2505, 2960
 04/11/05 ADOPT: 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21 AMEND: 4970.00, 4970.01 REPEAL: 4970.02, 4970.03, 4970.04, 4970.05
 04/07/05 ADOPT: 1.71 AMEND: 2.09, 2.10, 5.00
 04/04/05 AMEND: 119900
 03/30/05 AMEND: 825.03, 825.05, 826.01, 826.03, 829.04, 829.05, 827.02
 03/30/05 AMEND: 852, 852.2, 852.3
 03/28/05 ADOPT: 53.00, 53.01, 53.02, 53.03, 149.1, 149.3 AMEND: 149
 03/25/05 ADOPT: 745.5 AMEND: 746
 03/14/05 AMEND: 150
 03/08/05 AMEND: 29.05, 29.40, 30.00, 120.7, 122, 123, 149, 165, 180, 630, 632, 747 REPEAL: 27.20, 27.25, 27.30, 27.35, 27.40, 27.42, 27.45, 27.50, 27.51, 630.5
 03/01/05 AMEND: 52.10, 150.16
 02/28/05 ADOPT: 125
 02/28/05 AMEND: 670.5
 02/22/05 ADOPT: 1052.4 AMEND: 895.1, 1052, 1052.1
 01/31/05 AMEND: 17943, 17944
 01/28/05 ADOPT: 3806.3, 3806.5
 01/11/05 ADOPT: 25201
 01/10/05 ADOPT: 800.6 AMEND: 800, 800.5, 801, 802
 01/07/05 ADOPT: 1038(i) AMEND: 1038(e)
 12/27/04 ADOPT: 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10287, 10288, 10289 REPEAL: 11325
 12/27/04 AMEND: 1.91, 27.60, 27.65, 27.82, 27.83, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58, 28.90
 12/22/04 ADOPT: 18456.2.1, 18460.2.1 AMEND: 18449, 18450, 18451, 18456, 18459, 18459.1, 18459.2.1, 18459.3, 18461, 18462
 12/21/04 AMEND: 7.50(b)(180)
 12/21/04 AMEND: 851.50, 851.51, 851.51.1, 851.54
 12/13/04 ADOPT: 18660.5, 18660.6, 18660.7, 18660.8, 18660.9, 18660.10, 18660.11, 18660.12, 18660.13, 18660.14, 18660.15, 18660.16, 18660.17, 18660.18, 18660.19, 18660.20, 18660.21, 18660.22, 18660.23, 18660.24, 18660.25, 18660.30, 18660.31, 18660.32, 18660.33, 1
 12/13/04 AMEND: 180.1, 108.3

Title 15

03/01/05 ADOPT: 3999.1.8, 3999.1.9, 3999.1.10, 3999.1.11
 01/31/05 ADOPT: 4141, 4141.1
 01/31/05 ADOPT: 3436
 01/25/05 ADOPT: 4750, 4750.1 AMEND: 4751
 01/06/05 AMEND: 2000, 2400, 2403
 12/30/04 AMEND: 3097
 12/29/04 ADOPT: 3000 AMEND: 3005, 3044, 3062, 3313, 3314, 3315, 3323, 3376 REPEAL: 3045.1
 12/27/04 ADOPT: 2251.5 AMEND: 2041, 2072, 2073, 2074 REPEAL: 2050, 2051, 2052, 2054, 2055, 2056, 2701
 12/14/04 ADOPT: 3194, 3195 AMEND: 3006, 3044, 3092, 3100, 3101, 3107, 3138, 3161, 3190, 3191, 3192, 3193 REPEAL: 3044, 3092, 3138, 3190
 12/09/04 AMEND: 2253

Title 16

04/25/05 AMEND: 1805.1, 1807, 1807.2, 1811, 1816, 1816.1, 1816.4, 1833, 1833.1, 1833.2, 1846, 1846.1, 1850.7, 1874, 1886, 1887.4, 1887.9, 1889, 1889.1, 1889.2, 1889.3
 04/21/05 AMEND: 1398.38
 04/21/05 AMEND: 1399.155
 04/14/05 AMEND: 1398.30
 04/14/05 AMEND: 54.1, 54.2
 04/14/05 AMEND: 1071, 1083
 03/28/05 AMEND: 1399.688
 03/17/05 ADOPT: 869.1, 869.2, 869.3, 869.4, 869.5
 03/16/05 ADOPT: 4160, 4161, 4162, 4163
 03/08/05 ADOPT: 2624.1 AMEND: 2604, 2615, 2624
 03/08/05 ADOPT: 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4216, 4218, 4220, 4222, 4224, 4226, 4230, 4232, 4234, 4236, 4240, 4242, 4244, 4246, 4248, 4250, 4252, 4254, 4256, 4258, 4260, 4262, 4264, 4266, 4268
 03/07/05 ADOPT: 1358.1
 03/07/05 ADOPT: 2755 AMEND: 2756
 03/03/05 AMEND: 1399.500, 1399.501, 1399.502, 1399.506, 1399.512, 1399.521, 1399.530, 1399.543, 1399.546 REPEAL: 1399.519, 1399.522, 1399.553, 1399.554, 1399.555
 03/01/05 AMEND: 1005
 01/31/05 AMEND: 1319, 1319.4, 1321, 1322, 1326, 1328, 1329, 1351
 01/24/05 AMEND: 1379.20
 01/20/05 AMEND: 3008, 3031, 3041, 3042, 3062.1
 01/13/05 AMEND: 1588

01/12/05 ADOPT: 1355.35
 01/06/05 ADOPT: 1042, 1042.1, 1042.2, 1042.3,
 1042.3, 1042.4, 1042.5, 1042.6
 12/29/04 AMEND: 2526, 2529, 2532, 2533, 2534,
 2581, 2584, 2586, 2587, 2588, 2588.1
 12/22/04 AMEND: 1536
 12/20/04 ADOPT: 4123
 12/20/04 AMEND: 1567, 1568, 1569
 12/17/04 AMEND: 1397.60
 12/16/04 ADOPT: 1387.6, 1387.7, 1389.1, 1390.1,
 1390.2, 1390.3, 1390 AMEND: 1387,
 1387.1, 1387.2, 1387.3, 1387.4, 1387.5,
 1391.3, 1391.4, 1391.5, 1391.8, 1391.10,
 1391.11 REPEAL: 1390
 12/10/04 AMEND: 1397.62
 12/09/04 ADOPT: 1398.26.5 AMEND: 1398.26

Title 17

04/26/05 AMEND: 3030
 04/04/05 AMEND: 93115
 03/30/05 ADOPT: 54351, 58800, 58811, 58812,
 AMEND: 54302, 54310, 54320, 54370
 03/24/05 AMEND: 94011
 03/03/05 ADOPT: 90805, 90806 AMEND:
 90800.8, 90803
 02/09/05 ADOPT: 93116, 93116.1, 93116.2,
 93116.3, 93116.4, 93116.5
 01/13/05 ADOPT: 1029.117, 1029.134, 1031.8,
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 03/07/05 ADOPT: 2.3.1 AMEND: 8.2
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 04/11/05 AMEND: 66260.201
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 01/27/05 ADOPT: 51000.10.1, 51000.15.1,
 51000.20.9, 51000.31, 51000.51,
 51000.52, 51000.53, 51000.60 AMEND:
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 51000.6, 51000.7, 51000.16, 51000.30,
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 12/27/04 AMEND: 4402.2
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03/28/05 AMEND: 2611
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 02/16/05 ADOPT: 31-503 AMEND: 31-206, 45-
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01/25/05 AMEND: 63-300, 63-504
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